

COMMITTEE STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
of Duke Energy's Morro Bay) 00-AFC-12
Power Plant Project)

PEREGRINE ROOM
DUKE ENERGY, MORRO BAY POWER PLANT
1290 EMBARCADERO
MORRO BAY, CALIFORNIA

THURSDAY, AUGUST 16, 2001
9:15 a.m.

Reported By:
James Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal Moore, Commissioner, Presiding Member

Terry O'Brien, Commissioner Advisor

Gary Fay, Hearing Officer

STAFF PRESENT

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Kae Lewis, Project Manager

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INTERVENOR

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Plant Expansion

Gordon Hensley
Environmental Defense Center

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1 P R O C E E D I N G S

2 HEARING OFFICER FAY: Good morning.

3 This Status Conference was announced by public
4 notice that was issued on August 6th. And
5 Commissioner Moore is not yet here, but he plans
6 to attend. However, I want to emphasize that this
7 is not an Evidentiary Hearing. Commissioners are
8 not required to attend conferences.

9 So this is an informal event, and it's
10 basically so that the Committee can learn where
11 the case is and its progress, what materials or
12 analyses need yet to be provided, and how getting
13 those materials may affect the schedule of the
14 case.

15 A couple of preliminary things. The
16 bathrooms are outside, and in the double doors.
17 And you'll see a sign for the men's as you walk
18 in, and then you go through -- and that's to the
19 left. But if you continue through the first
20 double doors and through the second double doors,
21 there's a big sign that says "Ladies". So that
22 takes care of that.

23 Sign-up sheets, Roberta, where are you?

24 PUBLIC ADVISER MENDONCA: Here.

25 HEARING OFFICER FAY: Ms. Mendonca has

1 sign-up sheets, and we ask that everybody please
2 sign in. It helps us keep you informed about the
3 case.

4 I addition, our mic technician has set
5 everything up with the microphones off, so before
6 you use a microphone, if you're at one of the
7 tables, please pull the button towards you, and
8 then when you finish speaking push it away. That
9 way we won't pick up a lot of collateral
10 discussions.

11 In addition, there's microphones on the
12 podium for public comments, and those are on now,
13 so you don't need to worry about those. There's
14 also a roving mic here at the audio-visual
15 machine, and anybody making a visual presentation
16 can use that remote mic. I think it's this one on
17 the stand.

18 I'm going to take appearances from the
19 parties and agencies. What that means is they
20 just announce what their organization or agency
21 is, and their name.

22 And then after that we will begin with
23 presentations, and I've asked the -- the Central
24 District of the State Water Quality Control Board
25 to make the first presentation. Then we'll move

1 to the Energy Commission Staff, and then the
2 Applicant, then the Coastal Alliance, and then --
3 and any other Intervenors who -- who have a
4 presentation, and the move to the agencies, City
5 of Morro Bay, et cetera.

6 Before we get started, are there any
7 questions about our process today? We will try to
8 move as quickly as possible, and I ask people to
9 keep their remarks short out of courtesy to the
10 members of the public that may want to make a
11 comment at the end, and so they're not held here
12 all day.

13 All right. I'll begin by asking the
14 Applicant to identify their people.

15 MR. TRUMP: Andrew Trump, Duke Energy.

16 MR. HOFFMAN: Wayne Hoffman,
17 Environmental Manager, Duke Energy.

18 MR. HARRIS: I'm Jeff Harris, on behalf
19 of Duke Energy.

20 MR. GRIMM: I'm Gary Grimm, Legal
21 Counsel on behalf of Duke Energy.

22 MR. VAN BUSKIRK: Ron Van Buskirk,
23 Pillsbury Winthrop, on behalf of Duke Energy.

24 MS. GROOT: Henriette Groot, Coastal
25 Alliance. I would also like to introduce the

1 other members of the Board of Directors. Jack
2 McCurdy, is in the audience. Dave Nelson and Pete
3 Wagner. I think that's it for our board.

4 MR. HENSLEY: Gordon Hensley,
5 Environmental Defense Center. We are representing
6 the Alliance in this issue.

7 HEARING OFFICER FAY: Staff.

8 MS. LEWIS: I'm Kae Lewis, Project
9 Manager for the California Energy Commission. And
10 to my left is Caryn Holmes, Staff Counsel. And
11 then also, Dick Anderson is here, our Staff
12 Biologist.

13 HEARING OFFICER FAY: Thank you. And
14 how about agencies? I see Mr. Fuz in back, Greg
15 Fuz, City of Morro Bay. Any other
16 representatives?

17 MR. HUBNER: Gerhardt Hubner, Regional
18 Board.

19 HEARING OFFICER FAY: Gerhardt Hubner,
20 Regional Water Quality Control Board. Yes, sir.

21 MR. WILLEY: Gary Willey, with the Air
22 Pollution Control District.

23 HEARING OFFICER FAY: All right. Thank
24 you.

25 Any other agencies? Okay. Ms.

1 Mendonca.

2 PUBLIC ADVISER MENDONCA: Roberta
3 Mendonca, Public Adviser.

4 For those of you that have not
5 participated in a Status Conference before, I
6 brought a simple one-page handout that sort of
7 gives the procedure of what's going to be
8 accomplished today.

9 Mr. Fay has already mentioned that the
10 sign-in sheet is being passed around, and I
11 encourage you to sign in, please. And also, the
12 process for public participation today is we ask
13 that you complete a blue card, giving us your
14 name, and when you're done with that, I can pick
15 it up. Just kind of hold it up, I watch for them.
16 I'll take them forward to Mr. Fay, and you'll be
17 called upon.

18 Thank you.

19 HEARING OFFICER FAY: I -- I need to
20 apologize to my colleague up here. To my left is
21 Terry O'Brien, who is the Advisor to Commissioner
22 William Keese, who is the Chairman of the Energy
23 Commission, and also the Second Member on this
24 Committee. And Mr. Keese will not be here today,
25 is not expected.

1 Any other preliminary things before we
2 get started?

3 Okay. Mr. Hubner, would you come and
4 speak to us about the Water Board's position,
5 please.

6 MR. HUBNER: Is this one? Great.

7 Good morning. Gerhardt Hubner, Regional
8 Board staff. I'm pinch-hitting today for our
9 project manager, Michael Thomas.

10 You should have received a letter sent
11 by our Executive Officer, Roger Briggs, dated
12 August 13. I have extra copies if anybody wishes.
13 I brought them with me.

14 In that letter, we requested CEC Staff
15 and the Commission for some further CEQA analysis
16 on some of the alternatives that have been
17 identified and looked at, specifically two of
18 them. We identified one we're -- we're looking at
19 closer in-house ourselves. But specifically, the
20 one through cooling and the technical options that
21 we feel are feasible, but may have non-water
22 quality environmental impacts. And we need that
23 analysis for us to draft our -- our NPDES permit,
24 our draft permit, and send that out for public
25 comment.

1 So we -- one thing that we are asking
2 today is what the timing of that analysis is, so
3 that we can incorporate that into our schedule and
4 Board meeting, hearings, upcoming for October and
5 December. And one thing that I have done is
6 looked at the -- potentially when we receive that
7 information, what it would take to go to an
8 October or December meeting.

9 And -- go ahead.

10 HEARING OFFICER FAY: I'm sorry.

11 MR. HUBNER: Yes.

12 HEARING OFFICER FAY: Can you comment on
13 whether the letter, in your opinion, adequately
14 addresses the specificity that you need in the
15 Staff analysis?

16 MR. HUBNER: Well, we did identify some
17 of the impacts and what we feel are -- are
18 necessary, such as Noise, Visual, and -- and the
19 letter itself may not be that specific, but we've
20 certainly -- I know my project manager has been in
21 touch with CEC Staff. And I think what we're
22 looking for is -- is a level of detail perhaps
23 that could be used for a permit type analysis.
24 And I'm not sure if that's clear, but we do need
25 more that's been -- than previously has been

1 provided, but certainly enough to -- to give the
2 decision-makers enough information, an informed
3 decision, so that this can move forward.

4 HEARING OFFICER FAY: Okay. We're very
5 concerned about this, because if -- if the Water
6 Board finds that, after Staff does its analysis,
7 that it's not adequate, then we have yet again
8 more delay. And so we'd like to get that
9 identified as clearly as possible at this time, so
10 that what they set their sights on is -- is the
11 proper target.

12 MR. HUBNER: Right.

13 HEARING OFFICER FAY: And I think we
14 really need that in writing. So if --

15 MR. HUBNER: Okay.

16 HEARING OFFICER FAY: -- if your staff
17 has supplements to this letter, we -- we really
18 need to have it in the record in writing --

19 MR. HUBNER: Okay.

20 HEARING OFFICER FAY: -- so it's crystal
21 clear to the Energy Commission Staff and the
22 Applicant, and all the other parties what is
23 expected.

24 MR. HUBNER: We can certainly provide
25 that.

1 HEARING OFFICER FAY: And is there -- is
2 there any sorts of -- sort of concurrence with
3 your Board on this? In other words, if -- if the
4 Board doesn't agree that it's an adequate level of
5 specificity and later says well, we need more, we
6 have yet again more delay. And --

7 MR. HUBNER: Right.

8 HEARING OFFICER FAY: -- obviously we're
9 concerned about that.

10 MR. HUBNER: Well, we do update the
11 Board on a regular basis. We had the workshop on
12 July 12th. They did come back with some specific
13 questions, and -- and part of that is -- is
14 contained in the letter.

15 That's certainly a risk. We don't feel
16 that it's a big risk. Our Executive Officer is in
17 contact with our Board, and -- and staff is, of
18 course, in constant contact with our Executive
19 Officer. So we're pretty confident that if we --
20 what's contained in the letter and any subsequent
21 writing that we do to you, we could provide your
22 Staff with enough direction that I think the
23 analysis could be completed.

24 And it's certainly not our intent to
25 delay the project at all. In fact, we will do

1 what we can to move it along.

2 HEARING OFFICER FAY: And also, you said
3 perhaps the level of detail required for a permit.
4 But if you were to permit, for instance, a dry
5 cooling alternative, obviously you'd need specific
6 design. I mean, that's a lot of detail. And I
7 think we want to be careful about the terms we
8 use. If --

9 MR. HUBNER: Okay. Sure.

10 HEARING OFFICER FAY: If it's not being
11 analyzed as an application, do you necessarily
12 want all the detail, 100 percent, that you would
13 have for an application?

14 MR. HUBNER: No. I'm just using -- just
15 drawing on some of my experience with other
16 projects, and -- and what would be needed.
17 Certainly you would need enough information to
18 identify any impacts. If there are significant
19 threshold, that they were mitigated to the degree
20 of insignificance. So you'd have all those
21 identified, so that that could then be taken into
22 any, I would imagine, conditions of approval or,
23 for us, for the biological or water quality
24 impacts, those impacts could then -- we could draw
25 on and put into our permit.

1 HEARING OFFICER FAY: Have you seen the
2 filings that the Applicant has submitted regarding
3 the alternatives? And I -- I believe there's one
4 dated August 9th that -- the cover letter's signed
5 by Andy Trump, that went into their position on
6 the aquatic filter barrier. And they made a
7 presentation to the City of Morro Bay regarding
8 dry cooling. Have you seen that?

9 MR. HUBNER: I have.

10 HEARING OFFICER FAY: And -- and is this
11 the type of level that you were anticipating? In
12 other words, they -- they discuss their position
13 on the environmental impacts of the alternative,
14 the efficiency cost of the alternative, and the
15 financial cost.

16 MR. HUBNER: Uh-huh. I certainly want
17 my project manager, Michael Thomas, to review it.
18 I know he hasn't, since this did come in this
19 week. There is certainly some good information
20 here. At this point I -- I don't want to label
21 whether it --

22 HEARING OFFICER FAY: Well, I'm not
23 asking you to if -- if this analysis satisfies
24 your ultimate needs.

25 MR. HUBNER: Okay.

1 HEARING OFFICER FAY: Only is this level
2 the type of thing you would expect Staff to do?

3 MR. HUBNER: Yes.

4 HEARING OFFICER FAY: Okay. All right.
5 Thank you.

6 Now, when -- when would the supplemental
7 comments to Staff regarding more specificity than
8 you put in your August 13th letter, when -- when
9 would you be able to send that to the Staff?

10 MR. HUBNER: We can get that out as
11 early as next week, middle of next week.
12 Michael's very good at turning things around.

13 HEARING OFFICER FAY: Middle of next
14 week. Okay. All right, great. All right, thank
15 you. That's very helpful.

16 And just for everybody's sake, what is
17 your ultimate concern about this information? Why
18 -- why is it that you think that Commission Staff
19 needs to prepare this analysis?

20 MR. HUBNER: Well, we've -- through the
21 studies that Duke completed, you know, there was
22 impacts from the once-through cooling system
23 identified, and we need alternatives and -- and
24 mitigation to offset that. And through that,
25 we've identified these alternatives, and our

1 jurisdiction is -- is water quality protection.

2 HEARING OFFICER FAY: And so you've
3 identified the alternatives, but --

4 MR. HUBNER: Yes.

5 HEARING OFFICER FAY: -- but you need to
6 evaluate whether they -- they, themselves, have --
7 have disadvantages, too; is that correct?

8 MR. HUBNER: Right. The -- the pros --
9 pros and cons of each, and that information would
10 be very important to my Board, when they take up
11 the draft permit.

12 HEARING OFFICER FAY: And when you
13 evaluate the analyses of these alternatives to the
14 original cooling water proposal, do you evaluate
15 them using the criteria under the Clean Water Act?

16 MR. HUBNER: That's correct. We use the
17 best available technology as one criteria, and
18 then we'll weigh other -- other factors, as well.
19 And -- and then it will be up to the Board to make
20 a decision how they want to go forward.

21 HEARING OFFICER FAY: Okay. All right.
22 Thank you.

23 You know, since you're up here, if you
24 don't mind, do any of the other parties have
25 questions of the Water Board representative?

1 Mr. Harris.

2 MR. HARRIS: We do, but I'm afraid it
3 might take us down path now we'll get into the
4 minutiae in a way that's not productive right now.
5 I've got some very detailed questions, and I'd
6 like to actually have an opportunity to hear Staff
7 and put our presentation out there, and then the
8 questions will make sense at that point.

9 HEARING OFFICER FAY: Okay.

10 MR. HARRIS: So if you're going to stick
11 around --

12 MR. HUBNER: I can certainly, just with
13 a caveat, if you're getting into very technical
14 issues, I might have to defer or -- or certainly
15 I'd be willing to take that information back with
16 me and we can get back to you in a very short time
17 with maybe some answers.

18 MR. HARRIS: I have the same
19 limitations.

20 MR. HUBNER: Okay.

21 MR. HARRIS: Fine. If you're going to
22 stick around, why don't we defer this.

23 HEARING OFFICER FAY: And, you know, I
24 want to make clear, there's nothing magic about
25 today. If -- if questions are put in writing and

1 delivered in a timely way, you may be able to get
2 some answers, rather than just putting Mr. Hubner
3 on the spot.

4 MR. HUBNER: Thank you.

5 HEARING OFFICER FAY: Staff, anything,
6 any questions? No.

7 Coastal Alliance? No. Okay.

8 All right. Thank you very much.

9 All right. Now we'll move to the Staff,
10 as to, you know, what they expect to be doing and
11 how it may affect the schedule.

12 MS. LEWIS: Well, since our last status
13 report, which was July 19th -- actually, our last
14 two status reports, we talked about three items
15 which we felt needed to be completed before the
16 Staff could put out a Final Staff Assessment, an
17 FSA.

18 The first was that we were waiting for
19 data responses from the Applicant for a number of
20 items, in about nine subject areas. And we have
21 been receiving those things throughout the summer.
22 We've received probably the last third of them in
23 -- just in this week. And they are now being
24 reviewed by the Staff for completeness. There's
25 actually two areas, Air Quality and Alternatives,

1 where we still have information outstanding.

2 But if the Staff reviews them and says
3 that they are complete, then -- then, for the most
4 part, those -- those information needs will be
5 met.

6 The second item was a biological
7 assessment. The Applicant was -- needed to
8 initiate the Section 7 consultation process by
9 filing a biological assessment with the EPA. And
10 Staff had indicated that it was necessary for us
11 at least to have the biological assessment and to
12 have its initial approval from the U.S. Fish and
13 Wildlife Service.

14 The third item is the one that was just
15 addressed, the issue of the -- the NPDES permit.
16 After the -- the July 12th Regional Board meeting,
17 additional information was requested by the Board
18 of the -- of the Board staff. They in turn had --
19 had asked us if we could provide some additional
20 information, sort of -- sort of a quick and dirty
21 analysis of potential CEQA impacts of the -- the
22 biological mitigation options. And we did that,
23 and gave that to them at the end of July.

24 And -- and then, what has happened since
25 is -- is the request made in the letter that was

1 referred to, where we have been asked to do a more
2 thorough site specific analysis of the CEQA
3 impacts of three of the mitigation measures being
4 recommended by the Board staff.

5 So at this point, what the Staff is
6 doing is preparing that site specific analysis.
7 And there's a number of parts to that. We are,
8 first of all, narrowing down the mitigation
9 options that we're going to do an analysis of.
10 The next step is we're going to need to provide a
11 conceptual design of these options, design and
12 location, in order to then pass this information
13 to our Staff in the -- the technical areas to do
14 the impact evaluation.

15 Once the impact evaluation is done,
16 we'll then have to determine if, in fact, there
17 are significant impacts of these options. Then
18 we'll have to develop mitigation for those.

19 HEARING OFFICER FAY: Excuse me. If I
20 can interrupt you for a minute.

21 MS. LEWIS: Sure.

22 HEARING OFFICER FAY: How many options
23 are you going to be looking at, and what are they?

24 MS. LEWIS: That -- that still needs to
25 be decided. The -- the Board has asked for three,

1 dry cooling, habitat equivalency, and the aquatic
2 filter. So we still probably need a little bit of
3 guidance from the Committee if -- if we're going
4 to go beyond that.

5 The Coastal Commission also has sent us
6 a letter in support of this more thorough
7 investigation of site -- the site specific
8 analysis, and they have identified dry cooling and
9 the aquatic filter for evaluation.

10 So we think this evaluation is critical.
11 We certainly agree with the Regional Board and
12 with the Coastal Commission that we need to do
13 this. There's been a lot of speculation about
14 what the impacts of these mitigation options are,
15 and so we need to do the analysis and to clear the
16 air of -- of this speculative nature.

17 And in looking, at this point, at the
18 length of time that it may take, as I said, the --
19 a key point here is that we are going to have to
20 do a conceptual design of these options and locate
21 them before we can -- we can pass this information
22 on to the -- those who are going to be doing the
23 impact analysis.

24 And we think this will take some weeks.
25 The completion of -- of an FSA could probably take

1 place like the third week of November.

2 HEARING OFFICER FAY: Looking at the
3 schedule proposed by Staff originally, which was a
4 one-year schedule, that would be a three-month
5 delay, at least. Are you aware of that?

6 MS. LEWIS: Oh, yes.

7 HEARING OFFICER FAY: And what is --
8 what is your estimate based on, the time estimate
9 on how long you would need?

10 MS. LEWIS: Well, we talked initially to
11 our consultant, who would be most likely pulling
12 together this analysis. And they felt that it
13 would take that much time to -- the key -- key
14 aspect here is going to be the design of the
15 options themselves. Design and location. And
16 they really felt that that would take three to
17 four weeks to do.

18 HEARING OFFICER FAY: Specifically, for
19 -- for all of these options, or --

20 MS. LEWIS: No, together.

21 HEARING OFFICER FAY: -- primarily --

22 MS. LEWIS: Not sequentially, but --

23 HEARING OFFICER FAY: Right.

24 MS. LEWIS: -- to do the design of all
25 of those.

1 HEARING OFFICER FAY: Okay. Is -- does
2 one particular option offer more challenges, in
3 terms of location?

4 MS. LEWIS: Well, I cannot tell you if
5 one's going to be more difficult than the other.
6 I think if you're looking, say, just a dry cooling
7 and the aquatic filter, both of them I think are
8 -- are big challenges for design and location. I
9 don't know which is more difficult.

10 HEARING OFFICER FAY: And then in terms
11 of habitat, would they be presenting options, like
12 possible areas where habitat could be acquired?
13 Is that the type of thing that they would be
14 doing?

15 MS. LEWIS: Yes. Yes, uh-huh. I
16 believe so.

17 HEARING OFFICER FAY: And what, if
18 anything, could accelerate this process?

19 MS. LEWIS: Cooperation from the
20 Applicant could certainly make things easier for
21 us, in terms of design and location.

22 MR. TRUMP: Yeah, I guess I -- I have a
23 question, if I could. When we -- when we're talking
24 about the design and location, are you speaking of
25 dry cooling as one of the options?

1 MS. LEWIS: Yes, dry cooling --

2 MR. TRUMP: And -- and you believe the
3 information you have right now is insufficient for
4 -- and that gets to my question, the information
5 Staff currently has is insufficient, and so should
6 we anticipate additional questions, or is the
7 Energy Commission going to design this system? I
8 guess I'm confused by your use of the word
9 "design".

10 MS. LEWIS: At this point we're
11 anticipating that we would have to provide the
12 conceptual design, but if we have assistance from
13 -- from you, we certainly can probably do that
14 much more quickly. And we can -- and we can deal
15 with all the information that we've gotten, and
16 have our Staff, or consultant, who will provide
17 this design, ask you questions and we'll be able
18 to -- to determine what variations we can -- we
19 can actually analyze.

20 MR. TRUMP: And so the Energy Commission
21 will be designing a dry cooling system, and -- and
22 proposing that for us here at -- at the power
23 plant?

24 MS. LEWIS: That's what we're
25 anticipating.

1 HEARING OFFICER FAY: Again, just for
2 everybody's edification. The conceptual framework
3 here is that because of the potential significant
4 impacts, the -- the dry cooling is looked at one
5 of the alternatives, along with the aquatic filter
6 and habitat restoration, that would be evaluated
7 in light of significant impacts. So it doesn't
8 mean that the Commission is now designing the
9 power plant.

10 MS. HOLMES: Yeah, let me clarify one
11 thing, and that's that we're not suggesting that
12 we're going to propose a specific final design of
13 something you would have to do. All we're doing
14 -- and Kae and I are not in a position to say how
15 much detail this involves -- we're trying to get
16 an idea of what design -- what level of conceptual
17 design is necessary for us to assess impacts.
18 That's what we're focused on at this point.

19 So, again, we're not -- we're not the
20 engineers, or whatever the technical discipline
21 is. But we're trying to work with our consultants
22 to come up with enough detail about these
23 alternatives, whether it's an aquatic filter or a
24 dry cooling system, or whatever else, that we can
25 reasonably assess the environmental impacts that

1 would be associated with the implementation of
2 those measures.

3 And we don't know what that level of
4 detail is, that's why we're working with the --
5 with the consultants. They may tell us they don't
6 -- that it is not a time consuming and difficult
7 process to design something to the level that you
8 will know what it looks like or what it sounds
9 like, but we're just initiating that process right
10 now. And that's going to be our focus. Give us
11 the level of detail that we need in order to
12 evaluate the environmental implications of
13 implementation of those measures.

14 HEARING OFFICER FAY: Okay. I just want
15 to interrupt and welcome Commissioner Moore. He's
16 here. So any uncomplimentary remarks you have
17 should be directed towards the governor's
18 appointee, and not me.

19 (Laughter.)

20 HEARING OFFICER FAY: The -- but back to
21 your point. I think the level of design is
22 absolutely critical in how much time and money is
23 consumed in this. And we must be extremely aware
24 of the requirements of CEQA and of the Clean Water
25 Act, and try to target that level of alternative

1 analysis, and not something that's far beyond that
2 or far short of that.

3 And so I -- I guess I would encourage
4 the Staff to work closely with the Water Board as
5 to what their needs are as defined by the Clean
6 Water Act. That -- that will be very critical.

7 MR. HARRIS: Mr. Fay.

8 HEARING OFFICER FAY: Yes.

9 MR. HARRIS: I guess I want to weigh in
10 on that same point. It's not a design issue, but
11 it is a legal issue.

12 In these proceedings we often hear from
13 Staff that they need not analyze the alternatives
14 in the same level of detail as the project. And
15 that's a CEQA principle that Staff adheres to in
16 their alternatives analysis. I think that's the
17 same framework that they're talking about, Caryn's
18 talking about, for their analysis here.

19 But I -- I do share your concern that we
20 not go beyond that standard in setting up --
21 setting up the details that are set -- is required
22 by Staff in this alternative. So that -- that's
23 point number one.

24 Point number two, briefly. We'll talk
25 more about the CEQA baseline issue, as well. We

1 can talk in some detail about that later, if you'd
2 like. But the -- the notion of mitigation, or
3 designing mitigation, assumes an impact that's
4 significant, and we're not -- we're not in
5 agreement as to whether there are significant
6 impacts to be mitigated.

7 HEARING OFFICER FAY: Okay. Is it your
8 position that under the Clean Water Act,
9 evaluation of alternatives to determine best
10 technology available is comparable in depth to the
11 alternatives analysis required under CEQA?

12 MR. HARRIS: There are different
13 standards. The CEQA standard is one the
14 Commission is very familiar with. The Federal
15 Clean Water standard, at least as it relates to
16 316(b), is a different standard. And I have --
17 and Gary Grimm is here, and he can speak to that
18 issue in some detail, if you'd like.

19 But the 316(b) standard is a technology
20 based standard. It looks at the Cooling Water
21 Intake Structure, the CWIS, and it's specific to
22 the CWIS. It does not require an analysis of
23 alternative technologies, so it does not require
24 an analysis of technologies which are not cooling
25 water intake structures.

1 And so there is a difference, I think,
2 between the federal law and the state law in that
3 respect.

4 HEARING OFFICER FAY: Thank you. So, to
5 get specific. Dry cooling, under 316(b), would
6 not be an alternative to a CWIS. Is that correct?

7 MR. HARRIS: That's correct.

8 HEARING OFFICER FAY: Okay. So can we
9 assume, then, that if the Staff uses the CEQA
10 level of required analysis for an alternative,
11 that they will have fully taken care of any
12 reasonable alternative analysis under the Clean
13 Water Act, Section 316(b)?

14 MR. HARRIS: I think that's correct,
15 yes.

16 HEARING OFFICER FAY: Good. All right.
17 I interrupted you. Anything further,
18 Ms. Lewis?

19 MS. LEWIS: No, I think that was it.

20 HEARING OFFICER FAY: Okay.

21 Let's -- let's go to Duke, then. And I
22 have asked Duke to review, at least in summary,
23 some of the presentations that they've made to the
24 City of Morro Bay, regarding the aquatic filter
25 and the dry cooling analysis, just so that we and

1 the audience can get a flavor for why this might
2 take some time to analyze.

3 MR. HARRIS: I'm going to ask Wayne
4 Hoffman to just briefly describe the materials
5 that's in the record so far, and then I would have
6 some more general remarks.

7 MR. HOFFMAN: Thank you, Mr. Fay, and
8 Commissioner Moore. My name is Wayne Hoffman, I'm
9 with Duke Energy.

10 I did want to make one response to the
11 Staff comments. I'm a little bit puzzled by the
12 comments about the possibility that you would --
13 there would be even more week delay after hearing
14 the Regional Water Board indicate that the level
15 of detail in the air cooling alternatives analysis
16 that was submitted on, I guess it was August 9th,
17 was -- appeared to be adequate for their purposes.
18 I have to wonder a little bit about where the
19 Staff is going with the need for additional
20 location or conceptual analysis, when we've
21 submitted a variety of concepts.

22 There's a very limited opportunity, in
23 terms of where this air cooling could go
24 associated with the proposed project, and I just
25 don't see that level of analysis necessary. I

1 think our response to clarify issues that have
2 already been identified, and that records that.

3 Anyway, the reports that have been --
4 the various bits of information and reports that
5 have been filed on -- related to the Gunderboom
6 began with the 316(b) alternatives analysis that
7 was filed and docketed as part of this project,
8 with the Regional Water Board and, of course,
9 provided to the Staff for the PSA and for, oh, the
10 AFC work. We also responded with an economic
11 analysis that was looked at in some detail, the
12 costs associated with various alternatives, and we
13 have refined those over time so there is a variety
14 of information that's been filed on that subject,
15 including something that we've done recently that
16 may update some of that information.

17 We provided --

18 PRESIDING MEMBER MOORE: What is that
19 something?

20 MR. HOFFMAN: Well, we -- we've just
21 gone back and taken a more detailed look,
22 Commissioner, at the way in which the cost of, for
23 example, air cooling, is evaluated, and looking in
24 more detail at the --

25 PRESIDING MEMBER MOORE: All I'm trying

1 to do is get you to be explicit. Is that the --

2 MR. HOFFMAN: Yeah, that --

3 PRESIDING MEMBER MOORE: -- that's the
4 August 9th?

5 MR. HOFFMAN: No.

6 PRESIDING MEMBER MOORE: Not --

7 MR. HOFFMAN: No, no, the August 9th is
8 -- is the -- does contain some of that
9 information. That's the most recent information
10 we've submitted.

11 PRESIDING MEMBER MOORE: But you have
12 something that you're going to submit beyond that?

13 MR. HOFFMAN: The August 9th submittal
14 is the most recent submittal on the subject.

15 There was also a detailed report with a
16 variety of attachments submitted on July 26th, on
17 the aquatic filter barrier, the Gunderboom itself.
18 Duke has submitted over time a variety of data
19 responses to the PSA, which addresses some of
20 these issues, also.

21 There is a detailed letter dated June
22 29th, to the Water Board, that included the
23 earlier information on cost analysis. And, let me
24 see if there's any other information. There was a
25 -- some descriptive materials on the aquatic

1 filter barrier sent to one of the Regional Board
2 consultants at Dick Anderson, of the Energy
3 Commission's request, one Michael Clayton. That
4 information, descriptive information was sent in a
5 package on July 30th.

6 MR. TRUMP: Let me interrupt very
7 briefly. The August 9th transmittal to -- to Bob
8 Edwards was copied to other people in the City of
9 Morro Bay, and Kae Lewis, Dick Anderson, Michael
10 Thomas, Daniel Chow, a number of other people. We
11 did not docket that. That was an oversight on our
12 part, and it will be docketed on Monday morning,
13 or tomorrow.

14 HEARING OFFICER FAY: Actually, that --
15 that has been docketed. I've got a docketed copy
16 dated August 14th.

17 MR. TRUMP: Okay, good.

18 HEARING OFFICER FAY: And that is --
19 that's got your cover letter on it, but the -- the
20 actual document is dated August 9th, entitled
21 Evaluation of Alternative Intake Technologies, Air
22 Cooled Condensers.

23 MR. TRUMP: That's correct.

24 MR. HOFFMAN: Mr. Fay, I think that --
25 that covers all the pertinent information.

1 HEARING OFFICER FAY: Okay.

2 MR. HARRIS: Mr. Fay, at this point
3 could I respond to Staff, as well? There are a
4 couple of issues, give them an update.

5 HEARING OFFICER FAY: Let me make sure I
6 know where we are.

7 So by citing these various analyses and
8 reports, you're saying that's -- that's where the
9 description is of -- of both the air cooling
10 alternative and -- and the aquatic filter.

11 MR. HOFFMAN: Yes.

12 HEARING OFFICER FAY: Okay. All right.
13 Mr. Harris.

14 MR. HARRIS: Kae mentioned two sets of
15 -- of documents, or, I guess, datapoints that they
16 -- that Staff needed.

17 Just to clarify and update. There were
18 additional items filed yesterday, probably while
19 you were driving down here, limited to
20 alternatives. And one more document that's
21 outstanding that was to be filed yesterday, that I
22 -- I pulled back because I wanted to do some more
23 editing on it, I thought it was a little rough.
24 So that'll be filed today, probably maybe even as
25 we speak.

1 So from our perspective, everything that
2 was on the Staff's checklist, plus our comments on
3 the PSA conditions, are now -- now they're
4 docketed, filed and served. And so I think we've
5 met those information requirements. I don't think
6 Staff has had nearly enough time to look at that
7 stuff yet, but I wanted to make sure that you know
8 it's in the record now.

9 HEARING OFFICER FAY: So your position
10 is that as to the first point, the expected
11 information, is that it is complete as far as
12 you're concerned.

13 MR. HARRIS: Yes, it is. But let me --
14 let me also add, though, that to the extent that
15 we can help move things along, given the -- the --
16 the analysis under CEQA, the detail you need for
17 an alternatives analysis, we're willing to -- to
18 help pull other things together. But we don't
19 think there's a lot that's outstanding.

20 HEARING OFFICER FAY: Okay. And does
21 that include the biological assessment?

22 MR. HARRIS: It has been docketed, yes.

23 HEARING OFFICER FAY: Okay.

24 MR. HARRIS: So that process is ongoing.

25 HEARING OFFICER FAY: Okay.

1 MR. HARRIS: And Terry Hoffman is here
2 to speak in detail on that issue, as well.

3 HEARING OFFICER FAY: Oh, yeah. And --
4 and Commissioner Moore asked, does that include
5 the terrestrial plan?

6 MR. HARRIS: I'll ask Terry to come
7 forward.

8 MR. TERRY HOFFMAN: It doesn't include
9 the terrestrial mitigation plan. We're about a
10 week away on that. We --

11 HEARING OFFICER FAY: It does not
12 include the terrestrial --

13 MR. TERRY HOFFMAN: It does not, right.

14 HEARING OFFICER FAY: Okay. So -- so
15 that is still outstanding.

16 MR. TERRY HOFFMAN: Yes.

17 HEARING OFFICER FAY: Okay. Are you
18 aware of any other materials that have not yet
19 been provided?

20 MR. TRUMP: Well, there -- there's been
21 -- there has been -- one recommendation would be
22 immediately following this meeting, we will send
23 to you a list of all the different documents of
24 what's been submitted, with dates and distribution
25 and what-not. There's also been a number of

1 technical working group meetings. There's been at
2 least two Regional Board workshops. The most
3 recent one was July 12th. So there's some
4 additional information that was shared, consistent
5 with the -- the written product, but those things
6 were discussed at length by the Regional staff,
7 the Board, and others, as well as city council
8 meetings in Morro Bay. So there is additional
9 information available from that standpoint.

10 Some information relevant, most recently
11 in the council meetings, regarding Duke's position
12 vis-a-vis the larger project, and opportunities,
13 or lack thereof, related to larger.

14 HEARING OFFICER FAY: Is the material
15 you submitted on August 9th to Robert Hendrix,
16 City Manager, Morro Bay, basically the
17 presentation you made before the city?

18 MR. TRUMP: Yes. It -- it was -- I had
19 a prepared set of comments that I -- I'd be
20 willing to provide to -- to the Commission, if
21 that's helpful, in addition to this packet of
22 material. So I presented a several minute
23 overview, and then I -- then I went into some
24 detail.

25 HEARING OFFICER FAY: Okay. I -- I

1 think that would be helpful. It's all related to
2 the project, it'd be good to have that docketed.
3 Especially since it was given before a public
4 body.

5 MR. HOFFMAN: Mr. Fay, I might just
6 emphasize one thing Andy said, and I'll try to
7 help make sure that this gets to the Staff. There
8 was a discussion at -- I believe it was the
9 Regional Water Board hearing on the 12th of July,
10 on the filter barrier. And -- and information
11 that the Board has regarding that might be useful.
12 And I'll make sure that the minutes of the
13 technical working group where a presentation was
14 done on that technology to the -- to the working
15 group get -- also gets to the Staff.

16 MS. LEWIS: We may have that already.
17 Is that what Brian had sent?

18 MR. HOFFMAN: No.

19 MS. LEWIS: It's different. Okay.

20 HEARING OFFICER FAY: When you say what
21 Brian had sent, was that the -- the packet with
22 the handwritten note from Brian Waters on the
23 front, and I think it was docketed August 14th.
24 Yeah. And that packet addresses the Gunderboom,
25 primarily, the aquatic filter. Gunderboom is a

1 trade name, is it, for the aquatic filter?

2 MR. HARRIS: It is. We've been
3 referring to it as the AFB, aquatic filter
4 barrier. I'd say basically that Gunderboom is a
5 brand name.

6 PRESIDING MEMBER MOORE: So even though
7 there are other -- there are other manufacturers,
8 are there not? No. So it's patented technology
9 that -- that's available only under that trade
10 name?

11 MR. HOFFMAN: That's correct. As far as
12 we know, at this point.

13 HEARING OFFICER FAY: And did I
14 understand you, Mr. Harris, to say that Duke is
15 willing to cooperate with Staff in its analysis on
16 these alternatives?

17 MR. HARRIS: Again, with the caveat that
18 we think most of the information is there. I
19 think Andy suggested we put together a letter that
20 in chronological order, that shows in the docket
21 where the information is. A very important thing.
22 Then that should clear up some of this.

23 Again, though, I do want to speak
24 generally about the idea of how much information
25 Staff needs, and whether that's appropriate for

1 this -- appropriate now.

2 MR. TRUMP: Yes, and -- and I think it's
3 important to note, too, in preparation of some of
4 the materials that were issued by Staff, and we
5 think there's probably too much detail we don't
6 need to get into. But there's important
7 engineering considerations, and we want to make
8 sure that, you know, you have to size the
9 condensers, they have to be specific to the type
10 of plant you're trying to build. We would propose
11 a plant of equal size, in terms of net output. We
12 would -- that would be a larger physical plant to
13 accommodate the losses and efficiency losses.
14 There will be air quality impacts associated with
15 that.

16 So, for example, we caution the -- the
17 Staff to suggest well, we'll just increase the
18 capacity of the facility, as a way to demonstrate
19 or to -- to show the alternative. That's not the
20 alternative. The alternative is an equal size
21 plant capable of producing an equal amount of
22 energy to the market. That means there's air
23 quality impacts.

24 So there's a lot of connected things
25 there, and we want to make sure that the

1 assumptions will be correct -- correctly stated,
2 so that there won't be any inappropriate
3 consideration on the size of the facility somehow
4 that's convenient for the analysis.

5 HEARING OFFICER FAY: Yeah. It seems to
6 me that the most efficient way to move forward on
7 this is -- is in a cooperative way. If we can get
8 maximum cooperation from the -- from the
9 Applicant, so that we avoid the problem of Staff
10 taking a lot of time into an alternative analysis,
11 that -- that then you would argue is not under any
12 rubric an alternative that is appropriate for
13 analysis. Because the idea here is that the
14 decision-makers can look at this, the Water Board
15 and the Energy Commission, and can say well, this
16 has some advantages, but here are the
17 disadvantages, as well, and -- and be well
18 informed.

19 MR. TRUMP: We -- we will do whatever we
20 can to move the questions forward. We certainly
21 -- we've expressed our strong views about the
22 feasibility of some of the directions, but we will
23 certainly do whatever we can to advance it. I
24 think, as evidenced by our substantial record and
25 what we've docketed, we've been extremely

1 responsive in terms of the thousand or so data
2 requests, and what-not, and we'll continue in that
3 spirit of turning the information as quickly as
4 possible.

5 HEARING OFFICER FAY: Great. Thank you.

6 MR. HARRIS: I guess I'm going to speak
7 to the issue of how we get there from here now, as
8 well.

9 HEARING OFFICER FAY: Okay. Why don't
10 you do that now.

11 MR. HARRIS: You know, the -- the
12 emphasis here on this, it's my understanding, to
13 try to figure out how we get the case moving
14 forward and, I mean, I -- I'm not going to tell
15 any secrets by saying we've involved everybody.
16 All parties are a little frustrated by the case to
17 date. But I think with the recent letter from the
18 Regional Board, and with the letters from the
19 Coastal Commission, we have some clarity in
20 developing a path now, and I want to talk a little
21 bit about that.

22 For a while there we were kind of in
23 this loop with all the various agencies, you know,
24 pointing at each other, saying that, you know, you
25 go first, and then we'll decide. But I think

1 we've got some clarity on that now. The Regional
2 Board is telling us we want an FSA. We have the
3 Coastal Commission telling us we want an FSA. And
4 so I think in terms of the mechanics of how to get
5 to an FSA, we're going to spend some time talking
6 about that. But I think that's what needs to
7 happen next, from our perspective.

8 And there are several issues that need
9 to be dealt with in that context, figuring out how
10 to get to the FSA. And we've spent a lot of time
11 this morning already, talking about informational
12 needs. We're going to do whatever we need to do
13 to get that information, and we have every
14 incentive to get that to you as quickly as
15 possible.

16 But we also don't want to spend time,
17 you know, developing in detail detailed designs
18 for alternatives, when CEQA doesn't require that
19 level of detail. And there may be issues, as
20 well, that are ultimately left for Evidentiary
21 Hearings. That's -- that's typical.

22 And so I guess the bottom line for us
23 today is we want to get things moving, we want to
24 make sure that we do whatever it takes to get
25 Staff to the point where they can issue the FSA.

1 There are several significant issues
2 that we want to talk about, related to how to get
3 to the FSA. And those relate to issues, most
4 significant issues related to the CEQA baseline.
5 I think that's probably one of the most sensitive
6 issues that we need to discuss today, you know,
7 what's the baseline, what's the appropriate
8 baseline. How is that reflected in the Final
9 Staff Assessment.

10 Reviewing that issue right now, it's our
11 view that there are two different baselines in the
12 -- in the Preliminary Staff Assessment. In most
13 sections of the traditional CEQA baseline, what is
14 the existing condition. The existing condition is
15 fairly obvious -- we can look out the window right
16 here and see it -- to us. And I think the
17 majority of the PSA uses the existing plant as a
18 baseline condition.

19 As it relates to the marine biology and
20 some of the water issues, I think the baseline in
21 the PSA has shifted. CEQA does allow for
22 consideration of a baseline other than existing
23 conditions under extraordinary circumstances. We
24 don't think that those circumstances are present
25 here, and we think that the rest of the document

1 reflects that those conditions aren't present
2 here.

3 That, to me, is a very fundamental issue
4 to move this entire process forward, because what
5 falls out of the CEQA baseline issue are all these
6 issues related to alternatives, and impacts, and
7 mitigation. And so fundamentally, we need to
8 spend as much time as you want to spend today
9 talking about that CEQA baseline issue, because I
10 think that is a huge hurdle to move us forward. I
11 think that's really an important issue.

12 MR. TRUMP: And part of -- part of, I
13 think, just to add on there, is there are
14 inconsistent treatments of the baseline issue in
15 the PSA. It's leading to at least influencing, I
16 think, the direction of the Staff analysis, for
17 one. So certainly an inconsistent treatment
18 doesn't quite make sense from our standpoint, at a
19 minimum.

20 MR. HARRIS: And I think in a sense,
21 too, that -- that the issues are a little more
22 elevated in this case than they are in some other
23 cases, in the sense that you have now two agencies
24 out there who have said that they want to rely on
25 the Final Staff Assessment. And so for us,

1 getting the proper framework for that Final Staff
2 Assessment is -- is at the core of what we want to
3 conference today.

4 The other issues that we can spend as
5 much time talking about, as well, as you like, we
6 touched on briefly, are the different standards
7 that the Regional Water Board applies under the
8 Federal Clean Water Act versus your CEQA
9 responsibilities, how those two things interplay,
10 if you will.

11 Just, I guess, a bit of history is
12 instructive here. We have the Regional Water
13 Board saying now that they'd like the FSA to be
14 issued before they issue a draft permit. That's
15 precisely the path that was followed at -- at the
16 Moss Landing -- at Moss. So there's clear
17 precedent, I think, from the Commission's
18 perspective, on that, as well.

19 And so to me, all the stars are kind of
20 lined up to say, essentially, you need the Final
21 Staff Assessment, you need it to move forward.
22 And we need some resolution on these basic CEQA
23 issues to be able to get a document that -- that
24 we can all rely on. So.

25 In terms of -- of Gunderboom, or the

1 aquatic filter, the AFB. We want to put that
2 issue out there and talk a little about that, and
3 also talk about some of the other issues based on
4 the Regional Board. There are some specific
5 questions that I'll -- we want the Board to
6 consider, based upon their letter. But before I
7 get to those, I want to talk generally about the
8 AFB issue.

9 From our perspective, the aquatic filter
10 barrier is a very promising technology. We're
11 excited about the possibilities. We think the
12 fishery's experts, in particular, are excited
13 about the possibilities. That technology in this
14 setting has a chance to become a proven
15 technology. I -- I would say right now it's fair
16 to say that it's not a proven technology. It's a
17 very promising technology, but it's not proven in
18 that respect.

19 So I wanted to get that out on the
20 record. And if the choices that are offered are,
21 you know, wait until it proves out before we move
22 forward, or drop it from consideration, I think
23 that's a false set of choices. Those aren't our
24 two choices. I think the choices that we have are
25 to move forward, recognizing this as a promising

1 technology, crafting some conditions of
2 certification that really recognize the promising
3 nature of this. Possibly talk to -- with the
4 working group and others about how to decide
5 performance standards for that technology. And if
6 it doesn't perform, then you have an off ramp and
7 other -- other ways to proceed, in terms of
8 mitigation.

9 And so to suggest that the Gunderboom
10 analysis, the AFB analysis brings us to a dead
11 stop, I think misunderstands where the Applicant's
12 coming from with that technology. We think it's
13 very promising. We think it could be included in
14 the conditions of certification, perhaps tied to
15 another mitigation proposal, and tied to
16 performance standards that the experts, not the
17 lawyers, but the experts agree make sense for
18 performance of those issues.

19 In terms of -- of what we think we need,
20 we've heard from the Regional Board in terms of
21 what they think they need to move forward, but we
22 think there are things that we need from the
23 Regional Board, and we're going to look to the
24 Committee for help on those things.

25 The habitat enhancement or habitat

1 evaluation program is mentioned briefly on the
2 second page of the Regional Board's letter. We
3 know there's been some discussion about how that
4 works. It's a very complex issue, but frankly, we
5 don't know if we have the level of detail that we
6 need to ultimately understand how they arrived at
7 an acreage, and how they arrived at a habitat
8 value. Really, I think what we're asking them for
9 is a very clear description of how that
10 methodology works. And I'm not suggesting that
11 there hasn't been a methodology. I'm just
12 suggesting that we're not fully aware of how the
13 Board reached its conclusions, and we need to know
14 how they reached those conclusions.

15 HEARING OFFICER FAY: Can I stop you
16 there. Didn't the Board rely on the technical
17 working group?

18 MR. TRUMP: Mr. Fay, there -- there --
19 as Jeff just indicated, there are a number of
20 issues still outstanding. We have relied on the
21 technical working group. However, there are
22 serious questions about the appropriate numbers to
23 be using for the entrainment percentage. We have
24 raised those questions in our most recent --
25 recent technical working group. The Regional

1 Water Board has indicated to us that they intend
2 to provide a dual set of numbers, those which have
3 already been produced by them, and another set of
4 numbers that reflects the position that we've been
5 taking, that these high numbers that have been put
6 out there are not reasonable.

7 There is still a serious question about
8 the numbers that the Regional Board used for their
9 second parameter that's integral to determining a
10 mitigation number which is the cost of either a
11 restoration or protection of -- of habitat. That
12 number, we believe, is considerably higher than --
13 than is appropriate for comparable land available
14 out there.

15 And there's also we haven't seen the
16 analysis that the Board's conducted yet on the --
17 the -- area which is the surface area, which is
18 the third parameter, which is a key to that
19 combination.

20 So as Jeff indicates, we're still
21 looking for -- for some clarity.

22 MR. HARRIS: And again, you know, we --
23 we're -- we understand that there may be
24 disagreements at the end of the day as to what the
25 right numbers are. What we're looking for here is

1 an understanding of how they got to those numbers.
2 That's really what we're looking for.

3 HEARING OFFICER FAY: You're saying,
4 you're asking our help in getting that
5 information? I mean, don't you -- aren't you able
6 to just ask the staff of the Water Board to
7 provide --

8 MR. HARRIS: I think -- well, that's one
9 of the questions we are going to pose to the Water
10 Board. And I wanted to put it on the table so you
11 all know, as well, because I think it's part of
12 your consideration. And I think it probably would
13 be best if we put in writing our questions to the
14 board, and that would -- at least one of them, the
15 first question that we want to ask. And so we'll
16 do that. We'll obviously docket that letter, and
17 file it served, as well.

18 And the second question that we want to
19 put to the board, this will have to be to board
20 counsel, so I won't go -- won't put Mr. Hubner on
21 the spot on this.

22 In their letter there are several
23 discussions about wanting a -- a site specific
24 CEQA analysis, which I interpret to mean the Final
25 Staff Assessment. And the next question we're

1 going to want to put to the board is just can you
2 confirm for us that when you refer to a site
3 specific analysis, that you are referring to the
4 Final Staff Assessment, and not some other
5 document issued by the Commission.

6 I think the only clear answer to what
7 that document is, it has to be the FSA, in my
8 view. That has the environmental analysis, a lot
9 more environmental analysis than a Proposed
10 Decision or a Final Decision. But I don't want to
11 get three or four or five weeks down the road and
12 then come back and have people say well, we meant
13 something other than the FSA. The FSA isn't
14 sufficient for our purposes. And so we want
15 clarity on that issue from -- from the Regional
16 Board.

17 The next thing we're going to want to
18 know, assuming that it is the FSA, we're also
19 going to want to understand exactly how the -- the
20 board intends to use that document. My
21 understanding is that they will not do a de novo
22 review, to use the legal term, but that they will
23 pick up that document as a responsible agency and
24 use it accordingly. I guess the nightmare
25 scenario from a schedule perspective would be to

1 have the FSA issued and then have that just be the
2 beginning of another process.

3 And so I'll want some clarity from the
4 Regional Board. Again, it probably needs to come
5 from their legal counsel, as to how they intend to
6 use that CEQA document.

7 And then finally, there is one statement
8 in the letter that I think in particular is -- is
9 a misstatement of the law, and that's -- it's in
10 the next to the last paragraph. Essentially, the
11 sentence reads, additionally, federal law requires
12 the Regional Board to consider alternatives to
13 minimize environmental effects on the Cooling
14 Water Intake System, the CWIS. This involves the
15 same issues and the same information as a CEQA
16 analysis, as we touched upon earlier. I think the
17 316(b) analysis is different than the CEQA
18 analysis, and that just may be a -- my reading of
19 that language, or it might've been a poor choice
20 of words. But I'll want some clarity on that, as
21 well.

22 So we're going to put those issues in
23 writing to the Regional Board.

24 Having said all of that, I think it --
25 it really brings you right back to the question of

1 what is in the FSA, and that takes you right into
2 the CEQA baseline issue. Ron Van Buskirk, with
3 Duke, has been dealing a CEQA for years, and has
4 been dealing with that issue. And actually, we'd
5 like to give him an opportunity just to kind of
6 synopsise our position on the baseline, if I
7 could.

8 HEARING OFFICER FAY: Sure. Go ahead.

9 MR. VAN BUSKIRK: Thank you, members of
10 the Panel. Ron Van Buskirk.

11 We are concerned, in looking over the
12 PSA, that in most of the sections of the PSA, when
13 the impact analysis is done -- when the impact
14 analysis is on, it is done by using the existing
15 environment, meaning the existing power plant.
16 And from there, you judge the impacts of the new
17 modernized plant. That is, of course, exactly
18 what CEQA requires. The guidelines are very
19 specific, and so are the cases.

20 In at least one section of the PSA,
21 however, somewhat inexplicably, the baseline is a
22 no project scenario, as if there were no plant
23 here and a brand-new plant would be being built.

24 HEARING OFFICER FAY: Which section of
25 the PSA is that?

1 MR. VAN BUSKIRK: Concerning marine
2 biology. I can -- in my notes I can give you
3 specific page. And there is some confusion,
4 perhaps, in one or another sections.

5 Now, to the extent that the FSA is a
6 CEQA based document, it is the equivalent of an
7 EIR, and it must be internally consistent. I
8 suppose in theory, one might have a different
9 baseline or a different issue, but if one did, one
10 would have to have a very cogent explanation for
11 departing from the standard CEQA rule.

12 As your legal counsel knows, there is a
13 word, the word "normally", contained in the CEQA
14 baseline regulations, but it's just a word. There
15 would have to be reasons behind it, and very
16 significant ones, to depart from the general CEQA
17 rule where you have to use the existing baseline.

18 Now, this can make a difference,
19 because, for example, if you don't use the
20 existing baseline and you're analyzing entrainment
21 impacts or marine biology impacts, and you pretend
22 like the plant doesn't exist in your analysis,
23 you're going to have impacts which are not
24 correctly stated under CEQA.

25 So we're very concerned that the final

1 product that the Commission produce, which I
2 gather is going to be relied on by other agencies
3 as a CEQA equivalent document, be internally
4 consistent on this point.

5 Where that would also lead you is -- is
6 that the existing plant for entrainment impacts
7 has actually greater impacts than the modernized
8 plant. In reality, there would be no significant
9 impacts in the comparison of the two, and no need
10 to study alternatives like dry cooling, or any
11 other mitigations.

12 Having said that, Duke intends to
13 cooperate fully in making the analysis of
14 alternatives in the record robust, and in
15 accordance with CEQA. But there is an issue, and
16 a very serious issue, that the proper CEQA
17 analysis, using the proper baseline, would
18 conclude there are no marine impacts.

19 So these issues need to be sorted out, I
20 believe, and we hope to work together with your
21 Staff and your legal counsel to arrive at either a
22 consensus, or at least we know what the difference
23 is and why there is a difference on those issues.

24 Yes, sir.

25 PRESIDING MEMBER MOORE: You -- you

1 intend to send us a letter that documents page by
2 page, or paragraph by paragraph, where you think
3 the discrepancies in this baseline evaluation
4 occur?

5 MR. TRUMP: I can -- I can provide that,
6 actually. It's --

7 HEARING OFFICER FAY: That was not
8 contained in your comments on the PSA?

9 MR. TRUMP: It's in the Biological
10 Resources section, page 4.2-15. And it reads that
11 the existing power plant would eventually be
12 closed down, and marine impacts resulting from the
13 cooling water system would cease. The Morro --
14 the modernization project, to paraphrase, extends
15 the life of the facility --

16 PRESIDING MEMBER MOORE: Right. I'm
17 asking a slightly different question, I think.
18 What I'm saying is that you just testified that
19 you think there's numerous instances where the
20 baseline is inconsistently applied. And --

21 MR. VAN BUSKIRK: No, I'd say there's at
22 least one. In general, if you look across the
23 impacts section, whatever they may be, visual,
24 noise, et cetera, it appears to us that the
25 analysis is using the existing plant as the

1 baseline. And yes, I think we either have or can
2 give you page citations.

3 PRESIDING MEMBER MOORE: Well, I --
4 going the other side. You're saying where the
5 existing plant is not used as the baseline, and if
6 there are -- if it's your contention that that
7 occurs in more than one instance, I'd like to see
8 it, because obviously we'd like to have an
9 internally consistent document.

10 MR. VAN BUSKIRK: Exactly.

11 PRESIDING MEMBER MOORE: No matter which
12 way it goes.

13 MR. VAN BUSKIRK: Exactly.

14 MR. HARRIS: Commissioner, those are --
15 those comments are in the document that I held to
16 be filed. Actually --

17 PRESIDING MEMBER MOORE: I see. Okay.
18 So we -- we, in fact, have not seen that document
19 yet.

20 MR. HARRIS: No. But Staff has got a
21 lot of information in the last week or so that
22 they certainly haven't had time to analyze. That
23 would be in that package.

24 PRESIDING MEMBER MOORE: Okay. Well,
25 that's -- I think that goes to our -- I understand

1 what you're saying, and I've seen that. But I'm
2 more interested in the more detailed comments of
3 -- of the potential inconsistencies. Underline
4 potential.

5 HEARING OFFICER FAY: Without getting
6 into a great deal of detail on -- on how you
7 measure the baseline, can you briefly give us a
8 flavor of how Duke defined the baseline in that --
9 in that area of -- of marine entrainment. I mean,
10 was it -- was it 12 months prior to submitting its
11 AFC, or, you know, what -- what timeframe did you
12 use? Or is it an average over five years --

13 MR. VAN BUSKIRK: Let me give you a two-
14 part answer, in the second part, and refer to
15 Andy.

16 The first part is however you define it
17 on a historic past basis, 12 months, 2 years, you
18 name it, that is an entirely separate thing from
19 assuming that in the future there would be no
20 plant at all. That's the error that we're talking
21 about. We're not talking about vagaries and past
22 historic operations and how do you come to the
23 base final map. I'll defer to Andy as to how it's
24 been done in the Duke submittals.

25 I'm talking about something entirely

1 separate from that, which is, if you will,
2 assuming the baseline to be no plant, the future
3 condition. And our point is a very simple one.
4 Current existing environment is sitting right
5 outside of us, and there's no amount of legalese
6 you could get to to call the -- the proper
7 existing environment no plant.

8 Now, as to what we did submit, Andy, do
9 you --

10 MR. TRUMP: The Energy Commission has
11 been participating in the technical working group
12 process. My understanding is that -- and also in
13 consultation with the Water Board, everything that
14 they're considering as being an evaluation of the
15 impacts associated with the level of cooling water
16 is of the new facility. There has -- it's been
17 based upon the permitted maximum of the permit of
18 the new proposed facility.

19 There has been some extrapolation to --
20 from an entrainment perspective, and what-not, to
21 well, what would be then the levels of entrainment
22 for the existing facility. But that's not part of
23 the Water Board's deliberation, in terms of is
24 this level of entrainment significant or adverse,
25 based upon their reading of the federal statute

1 requirements.

2 So I -- I don't see -- I'll defer to
3 Wayne or Brian here to provide some greater
4 detail. That's -- there has been an implicit
5 consideration of impact from the standpoint of the
6 existing facility versus the modernized facility.

7 HEARING OFFICER FAY: Okay. But can you
8 give me a little more detail? In other words, the
9 technical working group has -- has used some
10 perhaps average period of operation of the
11 existing facility, and that is the baseline? Is
12 that correct?

13 MR. HOFFMAN: In Table 2-1 of the --
14 Table 2-1 of the thermal report that was submitted
15 under Section 316(a), and I believe it's the same
16 table number under 316(b) resource assessment,
17 there's a description of these assumed base lines.
18 And I won't go into any detail about it. There's
19 a variety of footnotes that describe the weighted
20 maximum assumptions. In general, there were very
21 high levels of operation assumed for the future
22 operation of the plant in determining what these
23 predicted levels would be. And it's important to
24 note that all the entrainment assumptions are
25 directly proportional to those assumptions.

1 HEARING OFFICER FAY: Okay. So you're
2 saying they conservatively assumed a high level of
3 intake of ocean water for the new facility. Is
4 that correct? You just -- that's what you just
5 said?

6 MR. HOFFMAN: That's correct.

7 HEARING OFFICER FAY: And my question
8 is, against what are they weighing that? How did
9 they define the baseline?

10 MR. HOFFMAN: Well, we took, for
11 example, we -- one of the assumptions that -- that
12 we used here in the -- in the baseline was a
13 maximum of -- weighted maximum of -- of the
14 existing plant is 464,000 gallons a minute. There
15 was also an average flow rate which was based on
16 some operational assumptions, based on historical
17 operation, of 394,000 gallons a minute. So all of
18 these different assumptions are in this table.

19 MR. HARRIS: Wayne, let me interrupt for
20 just a second. I think simplifying it, the -- the
21 assumptions about historic operations have been
22 either actual -- they have not been the permitted
23 maximums. The -- the actual or based on the
24 capacity of the machinery, and what could the
25 machinery do at maximum actual operation. Not --

1 not the theoretical possible permit. Those
2 numbers are higher. So in that respect, the
3 baseline is created, I think, conservatively. We
4 haven't said, you know, what the new permit
5 allows. It's what is actually out there.

6 PRESIDING MEMBER MOORE: Right. So,
7 just to recap. What you're saying is that the --
8 the operational base is your baseline.

9 MR. HARRIS: Correct. Correct. And
10 both -- and let me be real clear about that. It's
11 both what we actually operate it at, and I guess
12 above that, what we actually operate it at, some
13 analysis are -- are based upon what physically
14 could you have done at the maximum. And both of
15 those increments are less than the permitted
16 number.

17 PRESIDING MEMBER MOORE: And we don't
18 have actual data on the circumstances where there
19 simply was no plant operation. We don't have
20 detailed monitoring aquatic analysis of --

21 MR. HOFFMAN: You mean for the plant?

22 PRESIDING MEMBER MOORE: To -- to act as
23 an operating baseline, in terms of corresponding
24 counts of marine life.

25 MR. HARRIS: We don't have that.

1 HEARING OFFICER FAY: Jeff, can I
2 interrupt you just a minute. I want to get a
3 response from Staff.

4 Before we spend a huge amount of time on
5 this, is the Staff uncertain of -- of what they
6 intend to use as a baseline, or do they have --
7 have established a position of what they intend to
8 do?

9 MS. HOLMES: Staff was well aware of the
10 baseline issue earlier, before we had these
11 workshops that they're referring to, and we've
12 discussed it -- at which we discussed it.

13 We understand that the presumption, if
14 you will, under CEQA, is that the baseline is the
15 existing operating conditions. And Mr. Van
16 Buskirk was correct, you could probably spend a
17 lot of time arguing about whether that's 12
18 months, 2 years, 5 years, 10 years.

19 It's an issue that I've done quite a bit
20 of work on, and I have presented options to the
21 Staff, and there's not yet been a final decision
22 on what baseline the Staff will ultimately use for
23 the Biological Resources section. It's something
24 that we're trying to resolve in the next couple of
25 weeks.

1 I would disagree, though, with the
2 characterization that that's a critical item for
3 purposes of finishing the work that we've been
4 discussing here today. As I understand it, from
5 both the Regional Board and the Coastal
6 Commission, they're interested in looking at --
7 whether you call them alternatives or mitigation
8 measures -- they're interested in looking at
9 aquatic filters and they're interested in looking
10 at dry cooling.

11 Should those agencies choose to require
12 those kinds of devices in order to -- for them to
13 find that their -- the rules that they implement
14 are being complied with, Staff obviously has to
15 undertake an analysis of both the environmental
16 impacts of meeting those requirements would be.

17 So I don't think that the question today
18 of whether or not the baseline is something other
19 than existing conditions has a lot of relevance to
20 the issue of whether or not Staff needs to be
21 looking in detail at the implications of either an
22 aquatic filter or dry cooling, since those other
23 agencies have indicated that they want us to look
24 at the environmental implications of those in
25 order for them to make their determinations under

1 their own rules and requirements.

2 HEARING OFFICER FAY: Well, you're --
3 you're correct. And in addition, the Applicant
4 has -- has agreed to -- to assist in what they've
5 referred to as a robust analysis of these
6 alternatives, notwithstanding their position that
7 -- that there's no significant impact, and
8 therefore no need to examine alternatives under
9 CEQA.

10 But I think that still leaves us with
11 the question of whether or not Staff will begin an
12 analysis for its FSA, not so much on the
13 alternatives, but its basic analysis using a
14 baseline that is very much at issue, and could
15 result in a wildly different statement of the
16 significance of impacts than -- than if another
17 approach is taken to baseline. And I just, you
18 know, I'm wondering if -- out loud, if this is
19 something that has to be joined at this time so
20 the Committee can direct exactly what type of
21 analysis Staff should do, before we get two bodies
22 of evidence that -- that just can't be reconciled,
23 because they do not do a comparable analysis.

24 MS. HOLMES: Well, again, in terms of
25 taking a closer look at the -- at the aquatic

1 filter and the dry cooling options, I don't
2 believe that they do, because of the fact that
3 other agencies have asked us to perform this
4 analysis. They say it's necessary for them to
5 reach the decisions that they need to reach on
6 their permitting issues. We need that for a LORS
7 compliance analysis, anyway, in our FSA, so we
8 need to do this level of analysis regardless. And
9 we're prepared to undertake it.

10 HEARING OFFICER FAY: I -- I understand
11 all that. My concern is having done --

12 MS. HOLMES: I guess I'm not
13 understanding your question.

14 HEARING OFFICER FAY: -- having done
15 that analysis, will your fundamental analysis,
16 under biological impacts, be reconcilable with the
17 Applicant's, because you chose a very different
18 baseline to look at, and that perhaps is
19 inconsistent with -- with what we used in prior
20 cases. And I just -- as I say, I'm thinking out
21 loud. Does the Committee need to give direction
22 on this so that all the parties are -- are using
23 the same application of CEQA.

24 MS. HOLMES: I -- I think there's a
25 couple of answers to that. First of all, at a

1 preliminary level, there hasn't been a final
2 decision by Staff management as to what baseline
3 it's going to use. That has not yet happened.

4 And I made that clear at -- at every
5 workshop we've been to, that we're -- we're
6 looking at our options. To be frank, I'm -- it's
7 difficult to, given what's going on, to get
8 decisions on things that aren't immediately right
9 in front of them at this point, because they are
10 -- are swamped.

11 In terms of should we reach a conclusion
12 that is fundamentally at odds with -- with the
13 conclusion that Duke reaches, when is the
14 appropriate time to address it. That's really a
15 Committee call. That's something that you could
16 take oral argument on at the time of Evidentiary
17 Hearings, it's something that you could take oral
18 argument on before or after Evidentiary Hearings.

19 Or you could -- or you could simply, you
20 know, ask for points and authorities and take them
21 under submission as to the decision. That's --
22 that's really your call.

23 HEARING OFFICER FAY: My concern is, the
24 downside of what you're saying is that between now
25 and whenever the evidence is presented, even if we

1 took oral argument, or just called for briefs on
2 that, time has been invested in applying what may
3 be the wrong standard. And, you know, we're --
4 we've got a lot of time problems in this case as
5 it is. I don't want to have anymore, especially
6 if there's a chance of -- of some inconsistency
7 with prior cases.

8 Counsel, if -- if you think points and
9 authorities might be -- might be helpful on this,
10 what I'm entertaining is the possibility of
11 calling for briefs on this question, or a
12 clarification of Staff's position. In other
13 words, fish or cut bait. And it's going to have
14 to be done pretty soon. And I, you know, I
15 understand the constraints on Staff, and this is
16 just a fact of being deluged with power plant
17 applications. But I think this is something that,
18 you know, that's what the Committee gets all the
19 humongous bucks for, and -- and the great honors
20 to decide.

21 (Laughter.)

22 HEARING OFFICER FAY: So I think we --
23 we should submit this question so we can get a
24 clarification on it.

25 And I have to say, for the record, that

1 in the -- in the Moss Landing Power Plant case,
2 the baseline was determined to be the relatively
3 immediate past of the Applicant, which in some
4 ways prejudiced them because PG&E had shut down
5 several years, five years before the application.
6 And -- and the Applicant didn't, if you will,
7 didn't get credit for that sort of impact. It was
8 assumed that, you know, the last five years
9 represented the baseline, and that's what they had
10 to deal with. And that's what the Commission
11 adopted.

12 MS. HOLMES: Let me go back to one item,
13 because I'm not sure I'm 100 percent understanding
14 what you're saying.

15 If you're asking how our analysis would
16 look different if we used one baseline versus the
17 other, is that what you're getting -- is that what
18 you're concerned about?

19 HEARING OFFICER FAY: Well, yes,
20 ultimately. Right.

21 MS. HOLMES: Well, I think it's --
22 obviously, if you had a baseline that was
23 immediate past operation, again, whether it's one,
24 two, three, four, two and a half years, whatever
25 it is, you'd have a baseline that would look at

1 the incremental difference.

2 Now, whether or not -- I don't know,
3 because I haven't asked the question of the
4 technical Staff, whether flow rates are directly
5 proportional to entrainment rates, or not. But
6 presuming -- assuming, for the moment, that they
7 are, you would have a very, very simple analysis
8 of what incremental impacts are or are not. And,
9 in fact, there might be a decrease with the new
10 plant, depending upon where you were in that -- in
11 that time period that we're -- that we would be
12 considering as the baseline.

13 So that would make the analysis probably
14 very consistent with the one that Staff presented
15 in Moss Landing, in terms of existing operation.
16 If Staff were to determine that the baseline were
17 something other than the immediate past one, two,
18 three, four, five years, then you would have a
19 different level of impacts, and Staff would
20 presumably identify what those impacts were and
21 propose mitigation for those impacts. I'm sure
22 that the mitigation that would be considered would
23 be the same kinds of things that you've already
24 heard about many times today, dry cooling, aquatic
25 filter barrier, habitat enhancement -- habitat

1 equivalency, excuse me.

2 HEARING OFFICER FAY: Right. But all
3 this discussion is premised on the fact that --
4 that two jurisdictional agencies that -- that must
5 issue permits for this plant to be built expect to
6 see this analysis. And the Applicant has agreed
7 to assist in -- in developing the analysis. So
8 there is no issue.

9 MS. HOLMES: That's -- that's what I --

10 HEARING OFFICER FAY: Right. So -- so
11 even if it shows a reduction of impacts, that's
12 irrelevant to whether this alternatives analysis
13 will occur. And I just want to clarify that.
14 This is not a traditional CEQA analysis, where no
15 impacts, the alternatives drop out.

16 Any questions on that?

17 MR. VAN BUSKIRK: We -- we agree with
18 that, although at the end of the day, CEQA has to
19 be applied correctly. And I would doubt that any
20 agency is allowed to impose mitigation where the
21 correct CEQA analysis says there is no impact. I
22 mean, I -- I'm not going to comment about the
23 Coastal Commission or the Water Board, but I -- I
24 do know how CEQA works. And so without impacts,
25 you'd have a hard time imposing mitigation.

1 But we have agreed, so that this record
2 will be complete, and there will be no unanswered
3 questions, to cooperate in the assessment of these
4 alternatives or mitigations, to a degree. And on
5 that respect, I just want to make note for the
6 record that the CEQA guidelines is very clear that
7 the significant effects of alternatives shall be
8 discussed, but in less detail than the project
9 itself.

10 And I think, as -- as you, yourself,
11 made the comment, Commissioner Fay, it would be a
12 mistake to launch off into the treatment of
13 alternatives as if they were a new incarnation of
14 the project, and study them at that level. That,
15 too, would be not in accordance with CEQA.

16 So there's a balancing as to the amount
17 of detail that can be required to analyze an
18 alternative -- an alternative or mitigation
19 measures, and we would hope that that wouldn't bog
20 down this process, slow it down further.

21 HEARING OFFICER FAY: We -- we have,
22 both in dealing with mitigation and -- or
23 potential mitigation and alternatives, we have
24 often essentially been forced to do analyses that
25 may not be called for, if it turns out there's no

1 impact. But in the interest of saving time, these
2 two things have to move forward in parallel.
3 Otherwise, if you find yourself disappointed that
4 there's a significant impact, then you begin a
5 mitigation analysis that costs more time.

6 MS. HOLMES: I'd like to -- if I could
7 make one point on that. We're not treating the
8 options that are being discussed here as project
9 alternatives. And so we're particularly concerned
10 about the fact, for example, that if one of the
11 other two regulatory, or both of the other two
12 regulatory agencies find that in order to issue
13 the permits and make the findings that they need
14 to make, that these options are going to be
15 required, then the Energy Commission has to have a
16 federal evaluation of the impacts of -- of what
17 it's -- of what's required to meet -- to meet the
18 laws.

19 So to that extent, I would have to
20 disagree that the level of detail that should be
21 provided is only that that's required for a
22 project alternative. I understand that project
23 alternatives obviously you evaluate in great -- in
24 much less detail. However, to the extent that one
25 or -- one of these alternatives may be required by

1 -- in order to comply with Coastal Commission or
2 Regional Board permitting requirements, we need to
3 know what the impacts of those are, because those
4 will become part of the project.

5 PRESIDING MEMBER MOORE: So you're --
6 you're differentiating between project
7 alternatives and levels of mitigation
8 alternatives.

9 MS. HOLMES: Right. Whether it's a
10 mitigation for a significant impact or whether
11 it's necessary to comply with -- with laws. Those
12 things then become part of the project, and we
13 must have an evaluation of what the impacts of
14 those are. And the same level of detail as we do
15 with any other component of the project.

16 So I'm differentiating between
17 alternatives and things that become part of the
18 project.

19 HEARING OFFICER FAY: Right. And --

20 MR. HARRIS: On that same point --

21 HEARING OFFICER FAY: I just want to
22 respond to -- to this comment about CEQA. Yes,
23 clearly, you -- you might object to mitigation
24 that was required in spite of a lack of
25 significant impacts. But here we've got two

1 processes going on, and if -- if the process under
2 the Clean Water Act identifies best technology
3 available as one of these, then even though the
4 Commission might be applying a traditional CEQA
5 analysis, the Commission also has to determine
6 that there's a likelihood, or actually has been
7 the issuance of an NPDES permit.

8 And so you kind of end up in the same
9 spot, because of the -- the two acts both applying
10 to this project.

11 MR. VAN BUSKIRK: We understand that.
12 We're not trying to prolong the discussion about
13 the different agencies' organic statutes and what
14 might be required, and I think our view would be
15 that the water board is dealing with technology,
16 not the technology available, not mitigation. But
17 we don't need to go into a long digression about
18 that, because we're prepared to support the
19 request to get the information before you and into
20 the record.

21 HEARING OFFICER FAY: Mr. Harris.

22 MR. HARRIS: If I could, actually it's
23 back on that same point. The -- I understand that
24 you need to provide information for the other
25 agencies to -- to act. Number one, they're

1 responsible under CEQA, those are different roles,
2 and I don't need to say more about that.

3 I also want to distinguish, though,
4 between LORS, things that are required for those
5 agencies to act, and -- and their preferences.
6 They may prefer to take a look at something like
7 dry cooling. My question to them is going to be
8 show me in your organic statute your authority, or
9 LORS, that -- that requires that kind of analysis.
10 And I understand the need to -- to have this thing
11 move forward as smoothly as possible, but we're --
12 I'm going to be resistant to advise my client to
13 do something additional that's simply a
14 preference.

15 I don't have anything specific in mind
16 when I say that, but I want to get that issue on
17 the table.

18 The other thing that I -- I want to
19 point out is that to a certain extent, folks need
20 to understand that we have to live in two separate
21 worlds at the same time, weaving all this. On the
22 one hand, we have the very strong legal position
23 that we're willing to -- to put out, and have
24 explained, I think, maybe briefs on this issue is
25 a good idea. But at this point, off the top of my

1 head, I'll support that. And we're not going to
2 relinquish that legal position, and I don't think
3 anybody's going to ask us to relinquish that legal
4 position.

5 And at the same time, we also understand
6 and live in the real world, and we may just at the
7 end of the day agree to disagree as to whether
8 there are impacts. Some folks may want to call
9 them impacts requiring mitigation, and we may want
10 to call them enhancements, because we don't think
11 there are impacts. But at the end of the day, if
12 we can put together a plan that everybody says is
13 best for the estuary and for the biological
14 resources, that's where we want to end up.

15 We've put on the table, if you will, the
16 aquatic filter barrier, the AFB. If we were going
17 to run to the position that there were no impacts
18 under CEQA, we don't have to do anything, we don't
19 have to -- Gunderboom or AFB.

20 So I think as long as people understand
21 that distinction between the legal position that
22 we absolutely have to protect, the record we have
23 to protect, and our willingness to consider
24 enhancements to take these issues off the table,
25 that's an important distinction to keep in mind.

1 But I do have some fear about no good deed going
2 unpunished. To the extent that you agree to do
3 something you're not required to do under law,
4 people treat that as an admission that you really
5 did have an impact. And so we're going to be
6 cautious about that.

7 But I do want to draw that distinction
8 out there and point to the AFB as an example of us
9 living in those two separate worlds at the same
10 time.

11 (Inaudible asides.)

12 PRESIDING MEMBER MOORE: Let me go back
13 to a question for Ms. Holmes for a second, if I
14 can. And that goes to an earlier point that was
15 made about -- or maybe it's to Kae -- about
16 inconsistent -- potential inconsistencies in the
17 PSA, Preliminary Staff Assessment.

18 Do you think that the dilemma that
19 you've been facing internally is reflected in the
20 document that it, in fact, might have some
21 inconsistencies because it's simply not a question
22 that was resolved yet?

23 MS. LEWIS: We think it's true that
24 there are those inconsistencies in the PSA.

25 PRESIDING MEMBER MOORE: And if we go to

1 the next step that counsel was talking about just
2 moments ago, that would be -- upshot of that would
3 be a resolution of those inconsistencies, once we
4 -- once you came to the determination of what
5 actually ought to be the baseline condition in
6 each one of the categories.

7 MS. LEWIS: Yes.

8 PRESIDING MEMBER MOORE: Thank you.

9 HEARING OFFICER FAY: Yes.

10 MR. TRUMP: Just one -- one last -- one
11 comment regarding process, I guess, in terms of,
12 you know, understanding the need for this
13 analysis. We've supported Rule 4 as best we can.
14 It would be a significant schedule reality, which
15 is if -- if we -- if the water board finds that
16 dry cooling is being today required for the permit
17 or if the Energy Commission, in their own
18 analysis, found that to be the only appropriate
19 mitigation, I think we would have a fundamental
20 issue of stopping the project and going back to
21 square one.

22 So that needs to be at least factored in
23 from a scheduling standpoint, in terms of how the
24 Energy Commission views the application, because
25 we would, in effect, withdraw the application.

1 PRESIDING MEMBER MOORE: In effect
2 withdraw the application, or you -- you think --

3 MR. TRUMP: We would -- we would
4 withdraw the application. We would then evaluate
5 a modernization proposal that would repower the
6 project, or the facility.

7 PRESIDING MEMBER MOORE: So if I
8 understand that comment right, what you're saying
9 in looking forward is that if -- if we find
10 ourselves coming to that conclusion, or we find
11 ourselves leaning towards that conclusion, that,
12 de facto, we will have created a condition where
13 this project will have to start over again in our
14 process.

15 MR. TRUMP: Well, correct. And part of
16 -- part of the challenges we do have some needs,
17 given an air district rule, to look thoughtfully
18 at the need for some additional NOx control.
19 There's an air district rule that will notch down
20 to two and a half tons per day, so we have some
21 investment decisions on three and four that need
22 to be made.

23 PRESIDING MEMBER MOORE: Is your mic on,
24 Andy?

25 MR. TRUMP: It is on. I'll speak more

1 clearly and loudly.

2 We have some operational considerations
3 around the NOx requirements. The air district has
4 a rule that ratchets down, and we're under a two
5 and a half ton per day cap starting 1/1/03. So we
6 have some immediate needs to evaluate that we
7 have. We don't have to do that as a cap, but it
8 does preserve and give us more room to operate in
9 the market. And so we -- we need to --

10 PRESIDING MEMBER MOORE: Preserve in
11 light -- operate in the market with the existing
12 plant.

13 MR. TRUMP: With the existing plant,
14 correct. So we -- my point is that we had a -- we
15 have a -- the best decision that we need to reach,
16 there would be a -- CARB is also looking at
17 retrofit requirements, which we have to be very
18 studied about and understand thoroughly. So we
19 just have some important and obviously responsible
20 decisions that we need to be making about the
21 existing facility.

22 So we're -- we're anxious and needful of
23 resolution about the legal parameters under which
24 we need to be operating under, regarding state
25 statutes and what-not, these very issues, so that

1 we just understand what's possible here and what's
2 not possible here. And if there were to be the
3 determination of going down these other roads, I'd
4 have to advise our senior management about what
5 those choices and options might be.

6 So we are really committed to getting
7 resolution on these important questions. We
8 understand they're very important. We'll do
9 everything to support the inquiries. But -- but I
10 wanted to share with everyone just the practical
11 effect of conclusion that -- in those directions
12 that we would have to significantly reevaluate,
13 most likely withdraw the application, or there's
14 timing issues, pursue the matter with the water
15 board in whatever appeals process were associated
16 with that, or working with the Regional Board.
17 We'd have to seek the appropriate resolutions
18 based upon the sequence of the various actions
19 that you and -- or the water board take.

20 So that's why I want to hesitate on
21 withdrawing the application, because obviously we
22 would seek to -- to resolve those issues as best
23 we can every step of the way. So.

24 HEARING OFFICER FAY: Okay. Anything
25 further from Duke, then?

1 MR. TRUMP: I was reminded just to
2 mention, I think, I guess from my layperson's
3 perspective, I think one of the important aspects
4 of the baseline issues is the fact that a very
5 important reason on this issue, which is our
6 position is that there is a baseline, it is the
7 facility. There's a reduction based upon the
8 modernization proposal that reduces the cooling
9 water flow and the entrainment levels. And one
10 reason that's very important as we consider
11 additional steps beyond that, such as this
12 filtration barrier, we have to come to some
13 reasonable decisions about its performance. So we
14 have to think about the multiplicative effect from
15 even additional reduction beyond what the inherent
16 efficiencies provide for the facility.

17 So that -- that's why I think the -- the
18 clarity of the baseline is also critical because
19 it'll lead to better decisions around what kind of
20 performance standards are we considering for the
21 next increment of improvement beyond the
22 modernization. And again, the next increment of
23 improvement would be our view, because we are
24 devoting to, you know, bring a new, more efficient
25 facility.

1 And it also effects our consideration of
2 the repowering options inside the facility. Those
3 repowering options can potentially increase the
4 output beyond 1200 megawatts. We have an envelope
5 of flexibility there in what we can do. And then
6 there's going to be questions based upon heat
7 balances and things about how much water flow. So
8 obviously, we're taking an eye to these questions,
9 because we need to understand what the permit
10 issues are associated with those other options
11 that we might pursue.

12 And we're hopeful that the 38 percent
13 reduction in the water flows associated with the
14 modernized plant would be fully considered by the
15 Commission, in terms of that sizable reduction
16 from the existing baseline conditions.

17 HEARING OFFICER FAY: Okay. We -- we're
18 going to go through and hear from the other
19 parties, and take public comments, so we don't
20 hold people too long. We'll take a short break
21 and then the Committee will come back and probably
22 direct that the parties file a response to this
23 baseline question.

24 But right now, I'd like to move ahead
25 and give the other parties an opportunity to

1 address the Committee.

2 Ms. Groot.

3 MS. GROOT: Yes.

4 HEARING OFFICER FAY: Is your microphone
5 on? And -- if you just pull the switch toward
6 you.

7 MS. GROOT: Okay. The Coastal Alliance
8 has asked a number of questions of Duke that tried
9 to establish what was -- what the impact on the
10 marine environment and on the air quality was.

11 Now, some of those questions still have
12 not been answered. And some of them were very
13 searching questions, very important questions.
14 I'd like to quote Mr. Harris. He says -- he said
15 this morning, one would like to know how -- how we
16 got to these numbers. And that has been our
17 effort to look at the 316(b) studies and say okay,
18 does that look right? Can we do the calculations,
19 can we indeed say yes, they were right in what
20 they said there.

21 Now, a number of those questions that we
22 asked were not answered. The -- the Energy
23 Commission Staff has supported us on a number of
24 those data requests, and do you have that document
25 up there --

1 HEARING OFFICER FAY: And as I mentioned
2 to you earlier, there's no problem with you
3 summarizing where you think we are. I just -- I
4 don't want to get into arguing those points,
5 because we did -- we did get your arguments and
6 the Staff's and the Applicant's, in writing. And
7 the Committee will be issuing an order on those
8 data requests.

9 MS. GROOT: Okay. Then I won't repeat
10 what's in that report.

11 However, we disagree with the Staff
12 saying that some information is -- is not -- it's
13 not necessary to provide some of the information
14 because it's been dealt with by the technical
15 working group. Well, we have not been party to
16 all of the data that went in to the technical
17 working group. Toward the end of that process we
18 were allowed to be observers, but we did not have
19 the -- we were not present at the initial
20 sessions, and we did not have all of the
21 documents.

22 So we still feel that data request 329
23 should be answered. And --

24 HEARING OFFICER FAY: Which -- which --

25 MS. GROOT: That is number 329. And

1 counsel thought that was not something that needed
2 to be provided. Counsel also had some doubts
3 about number 407, 408, 409. Again, these are very
4 important questions, and, yes, they were discussed
5 by the technical working group, but we did not --
6 we were not able to get our hands on -- on all of
7 the needed data, and that's why we made those
8 requests.

9 So that -- that is all about that
10 document, and that document basically talks about
11 marine impacts. One item on marine impacts, if I
12 may I'd like to call on Pete Wagner, briefly, to
13 -- to explain to you why we still have a question
14 about the actual water use that the new plant
15 would have. It's already stated by Duke that the
16 new plant would use less water. We have our
17 doubts about that.

18 Pete, can you briefly say something
19 about that, and then I have some -- a few more
20 comments. I know we want to be brief this
21 morning.

22 MR. WAGNER: Is this mic on?

23 Good morning, ladies and gentlemen. I
24 just want to --

25 HEARING OFFICER FAY: What is your name,

1 sir?

2 MR. WAGNER: Oh, I'm sorry. My name is
3 Peter Wagner. I'm representing the Coastal
4 Alliance as a board member. I have had
5 considerable experience in power plant siting, and
6 I've been an electrical engineering professor for
7 the last 40 years. Recently retired.

8 I want to comment on one thing that
9 you've just been discussing, and that is the
10 baseline for how much cooling water is being used.

11 Now, if you look in Duke's application,
12 you'll find there are two figures. One is what I
13 would call high, and the other is what I would
14 call low. And they are, respectively, 413 million
15 gallons per day, on the average, and 372 million
16 gallons per day, on the average. This gives you a
17 range, basically, which seems to be okay to me.

18 The question is what do you compare this
19 with from the past? If, as Duke did in its 316(b)
20 report, if you compare it just with the year 2000,
21 it turns out they used one heck of a lot of
22 cooling water because it ran 60 percent of the
23 time. It ran at 60 -- 59.5 percent capacity, and
24 used 567 million gallons a day.

25 We don't think that's at all reasonable.

1 Our position is that after 2003, when all this new
2 electricity comes online, which was predicted in a
3 PUC report about a year or two ago, which I have,
4 the -- the old plant, if it were still operating
5 and not replaced, would probably revert to its
6 historical operating pattern. If you look at the
7 ten year average, 1990 through 1999, excluding the
8 year 2000, which I claim as a freak year, you find
9 that the plant ran on the average at about 27.8
10 percent capacity, and it used approximately 390
11 million gallons of cooling water per day.

12 Now, all these figures are plus or minus
13 two percent because they're all estimates, and you
14 can argue about which averaging period was used,
15 and so on. But the net conclusion is, it seems to
16 me, that the new plant is likely to use just about
17 as much cooling water over a year as the old one
18 did, plus or minus a little, not very much.

19 On the other hand, the old plant doesn't
20 have anything like the lifetime of the new plant.
21 Duke wouldn't be putting \$600 million into a plant
22 they were going to shut down in 20 or 30 years. I
23 suspect, if you go by sort of rule of thumb for
24 the industry, the new plant is probably projected
25 to have a lifetime of about half a century. Let's

1 say 50 years. The old plant, on the other hand,
2 looks to me like it's good for maybe another 20.
3 And, in fact, 20 years is a figure that was
4 mentioned recently by a senior Duke official, and
5 quoted in the local newspaper as the expected
6 lifetime of the existing plant.

7 So now you're looking at 20 years'
8 cooling water use versus 50 years' cooling water
9 use, at about the same annual rate. Thank you.

10 And incidentally, I will be submitting
11 this to you, docketing this in the next few days.

12 HEARING OFFICER FAY: Okay.

13 MR. WAGNER: Thanks.

14 MS. GROOT: Thank you, Pete.

15 My next comment is about emissions, air
16 emissions. And there was a data request on ground
17 level emissions in certain areas of North Morro
18 Bay, and we had a promise from Gary Rubenstein
19 that they would let us have some data on that. I
20 don't believe we received that, no. We still
21 think that is an important question, and even more
22 important, and Kae and I have -- have communicated
23 about that, is the question of duct firing in --
24 in the center of a community.

25 Now, duct firing apparently causes more

1 pollutants, and we would -- we asked is this
2 allowed anywhere else in the middle of a
3 community. And we would still like to know that.

4 Finally, now, the -- I realize the CEC
5 has its separate categories for evaluating --

6 HEARING OFFICER FAY: Excuse me, Ms.
7 Groot.

8 MS. GROOT: I'm sorry.

9 HEARING OFFICER FAY: Before we go on,
10 I'm sorry to interrupt you. But the duct firing
11 question, is that contained in a specific data
12 request, and can you give me the number of that
13 request?

14 MS. GROOT: Yes, that was a data request
15 to the CEC. I don't remember the number, I can
16 look it up.

17 HEARING OFFICER FAY: Okay. So -- so
18 you're still hoping to get an answer from the CEC
19 on that, is that correct?

20 MS. GROOT: Yes. We think that's a very
21 important question.

22 MS. LEWIS: Do you want -- want me to
23 respond to that?

24 HEARING OFFICER FAY: Sure.

25 MS. LEWIS: Yes, Henriette and I have

1 been exchanging information on getting them the --
2 the targeted information on duct firing and its
3 performance for a while now. So we -- we still
4 have to docket a formal response to that, but we
5 have been giving her some --

6 HEARING OFFICER FAY: Okay. So there's
7 no dispute on answering the question, you just
8 haven't been --

9 MS. LEWIS: No, no.

10 HEARING OFFICER FAY: -- able to answer
11 it yet.

12 MS. LEWIS: Right. Right. It's just
13 been a little difficult to get the exact
14 information she's looking for.

15 HEARING OFFICER FAY: Okay. Do you have
16 an estimate on when you might have that available?

17 MS. LEWIS: Oh, probably in another
18 week, week or ten days.

19 HEARING OFFICER FAY: All right. Thank
20 you.

21 I'm sorry to interrupt you. Go ahead.

22 MS. GROOT: Yeah, okay. Thanks.

23 Then, finally, the -- I feel the CEC has
24 an interesting categorizing habit as to
25 alternatives, and I know this has been explained

1 to me a couple of times, and it still bothers me.
2 In other words, you -- you look at alternative
3 sites as one issue, and you look at alternative
4 cooling methods as another issue. And I'm asking
5 this question. I'm saying these two issues might
6 very well be related. In other words, if -- if
7 Duke and Morro Bay are saying we don't like dry
8 cooling in this town, the answer -- the obvious
9 answer, the common sense answer is put the plant
10 somewhere else where dry cooling is acceptable.

11 And so we feel that that -- that should
12 be analyzed, that should be looked at. These two
13 issues should be analyzed in conjunction with each
14 other.

15 Thank you. That's the end of my
16 comments.

17 HEARING OFFICER FAY: Okay.

18 MS. GROOT: And now Gordon, for EDC.

19 MR. HENSLEY: Just to conclude our
20 comments. I'd like to pass on our support of
21 Staff's request for an altered timeline. That
22 seems reasonable in light of the letters from the
23 Coastal Commission, the Regional Water Quality
24 Control Board, and things we've heard from Staff.

25 In addition, we've heard some things

1 about baseline this morning, and I'd like to
2 support Commissioner Fay's request for briefs.
3 There is --

4 HEARING OFFICER FAY: Excuse me. I have
5 to correct you. Michal Moore is the Commissioner.
6 I'm merely the Hearing Officer.

7 MR. HENSLEY: Oh, okay.

8 (Laughter.)

9 HEARING OFFICER FAY: You can -- you can
10 refer to me as the mere Hearing Officer.

11 MR. HENSLEY: There is multiple CEQA
12 issues involved in the baseline and the discussion
13 that we're having. One of those issues covered
14 under CEQA is reasonably foreseeable impacts. In
15 this particular case, it's reasonably foreseeable
16 that this plant would have a working lifetime and
17 would cease at some point. And therefore, we --
18 we think that there -- there is significant
19 attention that needs to be given to the concept of
20 baseline and what we're using, as well as the --
21 as the CEQA guidelines that go here.

22 We, along those lines, we believe that
23 the no project alternative is a reasonable issue
24 to remain in the Staff analysis.

25 And our final comment is that the

1 technical working group had lengthy discussion on
2 the baseline issues, and their expertise should be
3 consulted before any conclusion is drawn to this
4 discussion on the baseline.

5 I'm sure that our attorney would
6 appreciate the opportunity to submit a brief.
7 They seem to like doing those sorts of things.

8 HEARING OFFICER FAY: And -- and if we
9 ask it of one, all parties will be -- will be
10 asked.

11 MR. HENSLEY: Thank you.

12 PRESIDING MEMBER MOORE: Let me -- let
13 me ask you a couple of questions on your last
14 statement, the working lifetime of the plant. Is
15 it your understanding that the land use of the
16 city would anticipate that the plant would, at the
17 end of its working lifetime, simply be eliminated?

18 MR. HENSLEY: I am not sure what the
19 city's thinking, but I think you heard implied in
20 the threat from Duke that their investors will be
21 making some decisions about whether or not to move
22 ahead.

23 PRESIDING MEMBER MOORE: That's an
24 economic decision. I'm actually asking you more
25 of a public policy issue. For those of you who

1 live in the community, would you anticipate that
2 at the end of the working lifetime of a house, a
3 30 year mortgage, a hundred year lifetime for a
4 house until it might have to be rebuilt, that it
5 would simply be eliminated because its working
6 usefulness would be --

7 MR. HENSLEY: Perhaps in this situation,
8 this zoning could be changed to something more in
9 line with what the surrounding zoning is on a --
10 on a working waterfront.

11 PRESIDING MEMBER MOORE: Right now, it
12 is your understanding that the zoning anticipates
13 that this use would be eliminated at some point in
14 time?

15 MR. HENSLEY: I'm not aware of that, no.
16 However, zoning is fairly easily changed.

17 PRESIDING MEMBER MOORE: Well, it's
18 changeable, right. I don't know about fairly
19 easily, but it's changeable.

20 HEARING OFFICER FAY: Just let me be
21 sure. Is there anything further, then, from the
22 Coastal Alliance?

23 MS. GROOT: I should ask the board
24 members who are present whether they would like to
25 say something at this point. Dave Nelson.

1 MR. NELSON: I am Dave Nelson, and I'm
2 not sure that your last question deals with what
3 -- what is the city's anticipated use of the land
4 at the end of the life of the plant. But their
5 MOU, it's real clear in there that for the new
6 plant, they do anticipate the new plant going away
7 at the end of its lifetime. So, you know, I don't
8 know if you can interpret that as the city's, you
9 know, what -- what they believe will happen at the
10 end of the lifetime. But it's clear in the MOU,
11 which you have a copy of, that the city does want
12 the new plant to be dismantled and go away.

13 So I would say that my understanding of
14 what's going on in the city is that -- that
15 they're willing to go another 50 years with the
16 plant, and, you know, so I would -- I'm not
17 pretending to speak for the city, but my
18 understanding of what's going on is that the city
19 would like it to go away in 50 years. And my
20 feeling is that, you know, this is a pre-CEQA
21 plant, and I would like it to go away, personally,
22 too, but we'll go along -- what's going on.

23 But, so that answers that last question.

24 HEARING OFFICER FAY: Thank you.

25 Anything further from the Coastal

1 Alliance?

2 MS. GROOT: Jack, did you want to --

3 MR. McCURDY: May I speak from here, or
4 -- is this on?

5 HEARING OFFICER FAY: I believe so.

6 MR. McCURDY: Now is it on? Is it on
7 now?

8 HEARING OFFICER FAY: Is the switch
9 pulled toward you?

10 MR. McCURDY: My name is Jack McCurdy,
11 I'm with the Coastal Alliance.

12 The evaluation of alternative technology
13 that was submitted to the Morro Bay City Council
14 last week by Duke Energy asserted that continued
15 use of once-through cooling for a new plant has
16 been put in potentially with the addition of an
17 aquatic filter as the best technology available.
18 Therefore, I am -- indicated that what should be
19 required to allow the project to go forward.

20 However, the most up to date scientific
21 evidence disproves that the Gunderboom, the
22 aquatic filter that Duke is touting, is proven,
23 and therefore, the best technology available.
24 Just a few weeks ago, testimony was submitted by
25 accomplished recognized scientist on the

1 application for a Gunderboom to the New York State
2 Board on Electric Generation Siting and the
3 Environment. The evidence also included studies
4 conducted by a team of marine scientists last
5 month at a plant on the Hudson River.

6 Without going in detail about it, we
7 have copies of those studies and that testimony,
8 and we will be submitting them to the docket. And
9 it's excellent information which I assume the
10 Energy Commission will review in developing any
11 kind of comments on this project.

12 HEARING OFFICER FAY: Yeah, we would
13 welcome that if you choose to submit it.

14 Okay. Ms. Groot, anything further? Is
15 that it?

16 MS. GROOT: Thank you. That's it.

17 HEARING OFFICER FAY: All right. Thank
18 you.

19 Mr. Harris, you wanted to respond.

20 MR. HARRIS: Actually, I was going to
21 surprise everybody and agree with CAPE. I think
22 it would be good to, in that briefing, look at all
23 the no project alternative and the baseline issue.
24 The baseline issues that we talked most about
25 today, I think that's the important one. The

1 related issue is the question of no project
2 alternative. And the baseline looks at existing
3 condition, and no project looks to the future.

4 Those are two separate issues under
5 CEQA, and quite frankly, I think that's the
6 problem here. Those concepts have been smooshed
7 together into a stew that's unsavory, and I think
8 to separate them out, the briefing would be a good
9 thing.

10 So I just --

11 HEARING OFFICER FAY: Let me ask you
12 something else. Both of those questions go to the
13 legal standard. But it seems to me that then,
14 beyond that, there's a question of specificity,
15 and I think that at least the Committee and the
16 Commission would probably be helped if the parties
17 not only were using the same legal standard, but
18 were actually using the same baseline.

19 Is there justification in having, for
20 instance, the technical working group, which we've
21 relied heavily on in the past, and we consider
22 them the -- the technical experts, recommending an
23 actual baseline, whether or not it's the same one
24 that you used in the AFC, so that we've got a
25 specific number. And I think it would help

1 everybody down the line.

2 As you mentioned, if -- if the
3 Gunderboom technology is to be considered, then
4 there has to be a way to evaluate its success.
5 And one way would be to measure it against
6 baseline impacts, and what are those. They must
7 be defined right -- perhaps not down to the -- but
8 -- but to some volume, and some numerical value of
9 impacts to the environment.

10 MR. HARRIS: I think that's -- that's
11 fine, you know, because what we're looking for in
12 the legal briefing is to set a legal standard.
13 Then the question becomes what are the facts, and
14 I think a determination of the facts, the working
15 group are the folks that would be helpful in this,
16 all arriving at a common set of understanding of
17 the baseline factually, you know, as long as
18 that's framed on the legal issues.

19 HEARING OFFICER FAY: Okay, thanks.

20 The Air District representative informs
21 us that he has to leave in another 20 minutes, and
22 certainly we will enjoy a few questions, dialogue.
23 So come on up and -- and address us, and then I've
24 got a couple of questions.

25 MR. WILLEY: Hi, I'm Gary Willey, with

1 the Air District.

2 Right now we're pretty much wrapped up
3 with our FDOC. We're working on a couple of minor
4 details on ambient air quality monitoring that our
5 board has asked us to look into. We're pretty
6 much prepared to go at any time. However, we're a
7 little hesitant, when a project seems like it
8 might be changing somewhat, to evaluate other
9 processes, dry cooling, for instance, and the air
10 quality impacts of that, and a little bit
11 concerned how that process would work, and we
12 issue a document based upon a project that has
13 changed.

14 I don't -- I haven't looked at all the
15 ramifications of that, but I still think we're --
16 we're prepared to go next week with our --

17 PRESIDING MEMBER MOORE: Prepared to go,
18 means prepared to issue?

19 MR. WILLEY: Yeah, we will issue --

20 PRESIDING MEMBER MOORE: The FDOC.

21 MR. WILLEY: Yeah, we plan to issue it
22 next week. We could've issued it this week.
23 However, we're taking a little bit of extra time,
24 and it appears the process has slowed down to a
25 point where we could use the time to clarify some

1 ambient air quality sites here in Morro Bay, and
2 so we're doing that.

3 But we fully expect to issue it next
4 week.

5 PRESIDING MEMBER MOORE: And can you
6 tell me, in your own analysis, what baseline are
7 you assuming, in terms of operations?

8 MR. WILLEY: Ours is fixed by law, by
9 our rules and regulations. So we have a five-year
10 window that we can look at.

11 PRESIDING MEMBER MOORE: And that five-
12 year window being a weighted average of operations
13 during that --

14 MR. WILLEY: Yes, it's a -- it's a
15 yearly average that we use. We take three out of
16 five years, and we look at the last three
17 consecutive years prior to the date of
18 application.

19 PRESIDING MEMBER MOORE: So is that --
20 is that three out of the five throw out the high,
21 throw out the low?

22 MR. WILLEY: No, it's three consecutive
23 years in any five-year period. And -- in the last
24 five-year period, we can take a 36 month cut, and
25 then take the yearly average for that. And that's

1 what we do, and it's fixed by law.

2 PRESIDING MEMBER MOORE: And so did --
3 but you have a little bit of flexibility in there,
4 in the sense that if you've got five, you're --
5 you're throwing out some --

6 MR. WILLEY: Right. But they have to be
7 consecutive. Thirty-six consecutive months. So
8 -- so if we find a period that's, you know --

9 PRESIDING MEMBER MOORE: Did you -- so
10 my question really gets to did you consider the
11 year 2000 anomalous?

12 MR. WILLEY: No, we did not.

13 PRESIDING MEMBER MOORE: So you found
14 that for your operations analysis, in your -- that
15 means that you considered 2000, '99, '98, in order
16 to get your three consecutive years.

17 MR. WILLEY: Correct. That -- and
18 that's our standard -- that's standard, that's --
19 if you read our regulations, that we look at the
20 last current three years.

21 PRESIDING MEMBER MOORE: Right. I'm not
22 trying to dispute it, I'm just trying to
23 understand so that we're all operating on the same
24 baseline.

25 In your analysis, included in that is

1 the 2000 year operation.

2 MR. WILLEY: Yes.

3 PRESIDING MEMBER MOORE: Okay. How much
4 more modeling -- let's say that -- that the
5 baseline was changed slightly. What -- what's the
6 implication in terms of manpower time that it
7 takes to remodel if there's a change in project
8 description that's not radical, but a change?

9 MR. WILLEY: As far as going through our
10 process? I -- I'm not sure how that would fit if
11 we had to go through and do a -- a new Preliminary
12 Determination of Compliance, and then a Final
13 Determination of Compliance. I would expect that
14 to take three months if we had to do something
15 like that, if the project changed.

16 PRESIDING MEMBER MOORE: That would have
17 to go back to your board, as well.

18 MR. WILLEY: It -- it doesn't go to our
19 board, per se. It goes through our process, our
20 public process, where we have to publicly notify
21 -- notice the project again and take public
22 comment. But our board does not have -- the Air
23 Pollution Control Officer has the decision on
24 that.

25 PRESIDING MEMBER MOORE: Anything else

1 that you want to add on behalf of your -- your
2 district?

3 MR. WILLEY: No, that's it.

4 PRESIDING MEMBER MOORE: And so we'll
5 expect that -- anything else not changing, we'll
6 see the FDOC in ten days?

7 MR. WILLEY: Yes. I've got federal jury
8 duty coming up in September, so it's going to be
9 out.

10 (Laughter.)

11 PRESIDING MEMBER MOORE: Sounds like a
12 -- a bounded equation. Okay.

13 Were you about to ask a question, Mr.
14 Harris?

15 MR. HARRIS: I just wanted to be clear
16 that -- that we're not changing the project
17 description. There have been a lot of discussions
18 about impacts and mitigations, but the project
19 description is as it is.

20 PRESIDING MEMBER MOORE: Well, we were
21 just discussing that offline up here, and unless
22 it was something absolutely radical, we wouldn't
23 be change -- we wouldn't be asking the air
24 district to do anything different. So we'll
25 expect that the FDOC is what we'll use in the

1 analysis. We expect it before jury duty. Good
2 luck.

3 MR. WILLEY: Thanks. I hope to get out
4 of it.

5 (Laughter.)

6 PRESIDING MEMBER MOORE: Oh, on the
7 record, too.

8 Yes, you have a question?

9 MR. VAN BUSKIRK: Just one question or
10 point of clarification, if I may.

11 The question was asked earlier by one of
12 you --

13 PRESIDING MEMBER MOORE: Wait. Do you
14 have a question for the air district, before I let
15 him go?

16 MR. VAN BUSKIRK: No, not the air
17 district. No, it was for the prior discussion by
18 the Coastal Alliance.

19 PRESIDING MEMBER MOORE: Okay. Thank
20 you. You're relieved.

21 MR. VAN BUSKIRK: The comment was made
22 that the new -- the MOU and/or the new agreement
23 being negotiated between the city and Duke
24 anticipate closure of the new plant. That is not
25 correct. They do have a provision on abandonment.

1 If at some time Duke were to elect to abandon
2 continued use of the new modernized plant, then
3 there would have to be facility closure. There is
4 nothing in it about whether it lasts 50 years, 100
5 years, 250 years, or otherwise.

6 Same comment with regard to the city's
7 existing zoning, as well as their general plan
8 update. Mr. Fuz is here, of course, but at the
9 current time that property is zoned for this use,
10 and there is no proposal in the city to change
11 that zoning.

12 But I wanted to make those comments.

13 PRESIDING MEMBER MOORE: I -- actually,
14 we're aware of that. I just wanted to make sure
15 it's on the record. I appreciate you clarifying
16 that.

17 MR. TRUMP: I also have just one other
18 comment that I -- there was a comment about the
19 participation in the technical working group that
20 was made by CAPE, and I just wanted to clarify for
21 the -- for the Committee. Duke has been extremely
22 proactive working with the regional board. We've
23 had two workshops to basically kind of flesh out
24 the issues, bring the results of the technical
25 working group to them, to the board, for

1 deliberation and discussion.

2 And at the one workshop, the board, one
3 of the board members requested that based upon a
4 request from CAPE, that they be allowed to
5 participate in this technical working group, and
6 that was granted. And since that time they've
7 been -- they've been participants or observers.

8 If there's any information that has not
9 been made available to them, we would by all means
10 want to know what that is, so we can provide that
11 information to them. But there's been no -- I
12 think it's been a very open process. And, in
13 fact, the technical working group has expanded
14 remarkably, and it fills a large room at this
15 point. I just wanted to clarify that.

16 Also, just an apology if my language was
17 in any way a tone threatening, as was insinuated.
18 I'm simply trying to ask -- we had a need, of
19 course, to get to resolution.

20 PRESIDING MEMBER MOORE: Yeah. Well,
21 this is -- we're aware of that.

22 HEARING OFFICER FAY: That's fine. And
23 we also have some other agencies -- first of all,
24 are there any other parties, Intervenor, present,
25 who wish to address the Committee?

1 Okay. I see no -- no hands, no
2 indication.

3 Other agencies that would like to
4 comment? Mr. Fuz, the City of Morro Bay.

5 MR. FUZ: Good morning, Commissioners
6 and parties. Just a few brief comments, some of
7 them based on a lot I heard this morning, and just
8 an update for your Commission on some other
9 matters.

10 With respect to the issue of the cooling
11 of the plant, our Planning Commission and the City
12 Council have been considering that issue. In
13 fact, as late as Monday of this week, our City
14 Council had a discussion on that matter, and I'd
15 just like to report to you that they've directed
16 that the staff bring back a resolution on their
17 next agenda, which would be August 27th, for them
18 to formally take a position on that issue.

19 And the direction they gave us to craft
20 the resolution is that based on the information
21 that's currently available to the council, they
22 would object to a method of cooling that would
23 increase the project's visual impacts, noise
24 impacts, socioeconomic impacts, air quality
25 impacts, and land use impacts. And from the

1 information that's been provided to them so far,
2 they believe that the alternate cooling methods
3 being considered have that potential, and they're
4 very concerned about that.

5 So we'll be providing a resolution to
6 your Commission shortly after the August 27th
7 meeting.

8 PRESIDING MEMBER MOORE: And you're
9 going to make that resolution available to the
10 water district, as well?

11 MR. FUZ: That's correct.

12 HEARING OFFICER FAY: Does that comment
13 -- you said the alternatives. I mean, do you lump
14 both the -- the aquatic filter barrier and -- and
15 the air cooling together?

16 MR. FUZ: Just alternative that have a
17 potential to increase impacts in those issue
18 areas. I don't think there's a lot of detail
19 available yet on the specific configuration of the
20 aquatic filter barrier. I think generally we're
21 interested in exploring that further, and we just
22 need to be a part of that process because of
23 harbor related issues.

24 HEARING OFFICER FAY: So your focus is
25 mainly on impacts related to noise, air quality,

1 land use?

2 MR. FUZ: Socioeconomic, visual. And
3 based on the information that has been provided to
4 date, the council is concerned that the various
5 dry cooling options, in particular, would have the
6 potential to increase impacts in those areas.

7 HEARING OFFICER FAY: Will -- will your
8 -- will your report to the City Council also
9 evaluate the Gunderboom, or the -- the aquatic
10 filter barrier?

11 MR. FUZ: There was information
12 presented with regard to that in the analysis done
13 by the regional board, and as well as Duke's
14 information has been provided to the council, as
15 well.

16 HEARING OFFICER FAY: Okay. Well,
17 whether or not the council takes a position on
18 that specific design, they can certainly comment
19 at any time in our process that -- that a more
20 specific design is presented. So you won't be
21 left out.

22 MR. FUZ: And also, two further updates.
23 We are working with Duke Energy to host a visual
24 resources workshop in the City of Morro Bay,
25 tentatively scheduled for the beginning of

1 October. And the purpose of that workshop is to
2 identify various aesthetic issues that the city
3 would like to have input on, present alternatives,
4 and then conclude with some direction to Duke and
5 recommendations to the Energy Commission on those
6 various aesthetic issues.

7 So we're in the agenda setting process
8 right now. We've hired a professional
9 facilitator, and we should have more information
10 for you and your Staff on that in the coming
11 weeks.

12 HEARING OFFICER FAY: Do you have a
13 timeframe on when you'd be making a recommendation
14 to the Staff?

15 PRESIDING MEMBER MOORE: A
16 recommendation --

17 MR. FUZ: The workshop would be held at
18 the beginning of October, at this point.

19 PRESIDING MEMBER MOORE: Right, but a
20 recommendation following that.

21 MR. FUZ: Immediately. Well, let me
22 take that back. The current structure of the
23 meeting is a joint Planning Commission/City
24 Council event. But our current thinking is that
25 we would have one more meeting immediately after

1 that, where our City Council could deliberate and
2 make -- reach final recommendations.

3 So I would guess by the second Monday in
4 October, which is the council meeting.

5 HEARING OFFICER FAY: I -- I, you know,
6 I don't think we need to get into the details of
7 scheduling now, but I -- but I hope you'd at least
8 consult with Ms. Lewis about the Staff's timeframe
9 on the FSA, because obviously, your
10 recommendations would be very useful for the Staff
11 to have before the FSA is published, and it would,
12 you know, it would give you an additional forum.
13 I mean, having made recommendations, then the FSA
14 would, if it -- if it incorporated those, would be
15 broadcasting those in the community, and people
16 could react.

17 So I'd just ask that you try to
18 coordinate that, so if at all possible your
19 recommendations come in in a timely way, so that
20 they can be included in the FSA.

21 MR. FUZ: Certainly.

22 PRESIDING MEMBER MOORE: And let -- I
23 don't know if this was on your list, but can you
24 address your estimates on when you'll have closure
25 with Duke on your -- your agreement, basically?

1 MR. FUZ: That was the next item on my
2 list. We are, I guess, pleased to announce that
3 we feel that we are on the verge of reaching
4 consensus on the agreement's language at the staff
5 level of both Duke and the City of Morro Bay, and
6 we'll be making a formal announcement to that
7 effect at the beginning of next week.

8 The City Council will be scheduling its
9 first public hearing on that agreement on August
10 the 27th. So we believe that that is -- is moving
11 forward on schedule, and we'll be providing your
12 Staff and Commission with the wording of the
13 agreement in the next few days, as it's changed
14 over the past several weeks.

15 PRESIDING MEMBER MOORE: Mr. Fuz, can
16 you comment on the discussion that was taking
17 place earlier about the MOU and the life span of
18 the plant? Is there any language in the MOU that
19 in your opinion specifically proscribes the length
20 of time that the plant would be operative or --

21 MR. FUZ: It's -- it's kind of a two-
22 track issue. The time limit that would go into
23 effect would be tied to the term of the new
24 outfall lease. The term of the new outfall lease
25 would be for 50 years, but it's incorrect to say

1 that there's anything in the lease or the MOU that
2 would require the plant to be removed at the end
3 of that period of time. The agreement specifies
4 that if there's a permanent cessation of
5 operations in terms of generating electricity, and
6 that's defined very carefully, then facility
7 closure would need to be implemented.

8 PRESIDING MEMBER MOORE; And -- and in
9 your zoning ordinance that's currently in effect
10 for the city, just to reiterate for the record,
11 the land is specifically called out and
12 anticipated for a use as an industrial M-type zone
13 energy facility.

14 MR. FUZ: Yes. I did want to address
15 that, as well. It's -- in fact, it's not only an
16 industrial zoning for any industrial facility. It
17 is specifically a coastal dependent industrial
18 zoning designation. And the significance of that
19 is that if the project moves from a project that
20 does not rely on seawater, that could jeopardize
21 the finding that we've made so far that it's a
22 coastal dependent project, which could then create
23 an inconsistency with the existing zoning, which
24 could then trigger the need for an amendment to
25 that zoning and/or an override by your Commission.

1 So we just wanted to make sure that you
2 -- you and your Staff are aware that that's a very
3 important issue, and that could change the
4 character of the entire process in terms of land
5 use.

6 PRESIDING MEMBER MOORE: Specifically,
7 where you're going with that is to the issue that
8 -- that was raised by Applicant about whether or
9 not dry cooling was applicable. If -- if it were
10 invoked it would eliminate some of the connection,
11 perhaps all of the connection with a coastal
12 dependent use.

13 MR. FUZ: Absolutely.

14 HEARING OFFICER FAY: Would the City of
15 Morro Bay, did you plan to communicate with the
16 Staff on its analysis of these alternatives?
17 Because that, for instance, is one effect that the
18 Staff should -- should pick up on. But, of
19 course, the city's most sensitive to that. That
20 would be an impact of -- of alternative mitigation
21 that relied entirely on dry cooling.

22 MR. FUZ: Absolutely. We've done a
23 fairly extensive analysis of land use issues, and
24 we've provided that to your Commission Staff.
25 And, in fact, I think that -- that very issue was

1 addressed within that analysis, and I believe
2 Coastal Commission staff actually takes the same
3 position.

4 HEARING OFFICER FAY: Okay.

5 PRESIDING MEMBER MOORE: Mr. Fuz, were
6 you here when the Coastal Plan was developed for
7 this area, were you --

8 MR. FUZ: No.

9 PRESIDING MEMBER MOORE: You've reviewed
10 the Coastal Plan as it was first developed and
11 passed by the Coastal Commission?

12 MR. FUZ: The current plan, that's
13 correct.

14 PRESIDING MEMBER MOORE: And the current
15 plan had embedded in it the power plant as it
16 existed at that time. Can you remind me what the
17 date was that your most recent Coastal Plan was
18 passed?

19 MR. FUZ: I believe it was in the late
20 1980's, and we're currently in the process of
21 doing an update on that plan.

22 PRESIDING MEMBER MOORE: So when the
23 coastal staff, I'm assuming that they were
24 operating in the same -- same standards and the
25 same procedures as we used in Monterey County,

1 when they were approving the plant, they had
2 before them the current operational
3 characteristics of the plant.

4 MR. FUZ: That would be my assumption.
5 In fact, there was a power plant siting study done
6 by the Coastal Commission that looked at not only
7 the Morro Bay site, but all the coastal sites in,
8 I believe, the mid-1980's. And as a result of
9 that study, the Coastal Commission made certain
10 designations in the coastal zone that identified
11 appropriate sites for power plants, and the
12 project site was so designated.

13 PRESIDING MEMBER MOORE: So implicit in
14 their analysis and the power plant siting study
15 committee that was used as a reference point for
16 the plant, they had a set of baseline conditions
17 that they literally incorporated as a part of
18 their analysis.

19 MR. FUZ: I would assume so. That's
20 right. And, in fact, the Coastal Plan that was
21 adopted also anticipated expansion of the existing
22 facility, and there's a discussion in the Coastal
23 Plan about various options for expansion and what,
24 you know, some of the considerations would be. So
25 that was anticipated, as well, in the -- you know,

1 in the 1980's.

2 MS. GROOT: Mr. Fay.

3 HEARING OFFICER FAY: Yes.

4 MS. GROOT: Commissioner Moore, just a
5 few sentences ago, explained why I feel it's so
6 necessary to have an analysis, a clear analysis of
7 the alternative technology in an alternative site.
8 And I -- I'm glad you're pursuing this line of
9 reasoning. I -- I think it's -- it's very
10 important that we do consider that.

11 HEARING OFFICER FAY: Well, I think
12 Staff will have that in the FSA, will they not?
13 An alternative site analysis?

14 MS. LEWIS: Yes, we will.

15 HEARING OFFICER FAY: Yes. Okay. So
16 that -- that will be addressed.

17 MR. TRUMP: On -- on the alternatives,
18 that's one of our concerns about some of the
19 alternatives, that if they're in fact in the
20 coastal zone, and they don't have an appropriate
21 designation, we don't see them in any way feasible
22 for siting in those -- in those locations either,
23 because the linear facilities going through the
24 coastal zone or the power plant being located in
25 it.

1 PRESIDING MEMBER MOORE: Well, or the
2 fact that the Coastal Plan didn't include them
3 already.

4 MR. TRUMP: Right. And we -- we feel
5 that the zoning issue in and of itself is
6 sufficiently strong that it would disqualify those
7 two particular sites that are in the coastal zone
8 from further consideration.

9 PRESIDING MEMBER MOORE: Let's -- let's
10 go there for one second. Mr. Fuz, your zoning is
11 derived from -- effectively derived from the
12 Coastal Plan that was approved.

13 MR. FUZ: That's correct.

14 PRESIDING MEMBER MOORE: As opposed to
15 the Coastal Plan being an implementation of your
16 zoning. Your zoning followed on the agreement
17 that your council had to come to, and your board
18 of supervisors had to come to, with the Coastal
19 Commission in order to have an approved Coastal
20 Plan.

21 MR. FUZ: That's correct. And it's been
22 certified by the Coastal Commission.

23 PRESIDING MEMBER MOORE: Okay. So that
24 would apply to any other area up and down the
25 coast. The existing zoning is going to be a

1 reflection of the existing certified and adopted
2 Coastal Plan.

3 MR. FUZ: Within the city limits,
4 certainly. I'm not aware of what the county --

5 PRESIDING MEMBER MOORE: Same procedures
6 --

7 MR. FUZ: The same procedures, that's
8 correct.

9 MS. GROOT: Mr. Fay.

10 HEARING OFFICER FAY: I'm sorry, Ms.
11 Groot. I really want to give Mr. Fuz a chance to
12 go through all his comments on behalf of the city.

13 MR. FUZ: Just a couple of other brief
14 comments. The city is also very interested in
15 receiving the FSA, as -- as all the other parties
16 are, and for similar reasons, that we intend to
17 rely on the FSA as our CEQA equivalent document
18 for the purposes of implementing the agreement
19 between the city and Duke. So in order for the
20 agreement to move forward to final fruition, the
21 FSA will need to be produced by the Energy
22 Commission.

23 So, you know, again, we're hoping for
24 that in the -- in the very near future. But right
25 now, we would just encourage all the parties to

1 work together to make that happen.

2 With respect to the Gunderboom, just to
3 highlight that we do need to be deeply involved in
4 that issue. We certainly don't have a position on
5 it now one way or the other, but it does affect
6 our harbor. There's a navigation channel within
7 the harbor, there's a Coast Guard facility, there
8 are various, you know, biological considerations
9 in the bay, and eel grass, et cetera. There may
10 be aesthetic issues. So we just need to be
11 involved in those issues.

12 There may be a lease issue involved with
13 regard to the use of -- of the bay for that kind
14 of a facility, and a negotiation involved in that,
15 as well. So we would like to be involved in every
16 substantive discussion regarding that issue so
17 that, you know, there are no surprises down the
18 road for anybody.

19 And just finally, we would hope that as
20 the Conditions of Certification are developed,
21 that we have an opportunity to work closely with
22 your Staff. We've issued extensive comments, I
23 think about 27 pages of comments on the PSA, and
24 made a number of specific suggestions for
25 Conditions of Certification, and we would just

1 like to make sure those are implemented.

2 Thank you.

3 HEARING OFFICER FAY: Thank you.

4 Ms. Groot, you had a brief comment?

5 MR. HENSLEY: It's not so much a comment
6 as much a question for Mr. Fuz.

7 The 1988 Coastal Plan is pretty --
8 pretty far out of date, and that's why you're
9 updating it. That's why the county's gone through
10 this big periodic review issue.

11 Are you aware that because of the new
12 technologies that have come forward, that the
13 Coastal Commission no longer considers power
14 plants to be a coastal dependent act?

15 MR. FUZ: I don't think that's
16 absolutely correct, and particularly with regard
17 to existing facilities and modification of
18 existing facilities. So there's a distinction
19 there.

20 I think that supports the point that I
21 made earlier, that if this project were to be
22 redesigned in a way that it doesn't rely on
23 seawater for cooling, that, you know, I think in
24 our minds and the Coastal Commission's minds, that
25 would clearly indicate that it is not a coastal

1 dependent use anymore.

2 MR. HENSLEY: Thank you.

3 MR. McCURDY: May I make one comment?

4 HEARING OFFICER FAY: Sure.

5 MR. McCURDY: I think it is the case
6 that the Coastal Commission staff does not
7 consider power plants --

8 HEARING OFFICER FAY: Wait. That's not
9 going to work. When -- when we have a statement
10 like that about the Coastal Commission, it's going
11 to have to come in and it's going to have to be
12 chapter and verse. So we're going to -- I think I
13 --

14 MR. McCURDY: Can I just -- can I just
15 recommend --

16 HEARING OFFICER FAY: -- I believe, is
17 not going to work in this case. I -- I'm sorry to
18 -- to interrupt you on that, but on something
19 that's as sensitive as this, if you want to file a
20 letter back, quote chapter and verse where they --
21 the Coastal Commission has said this or that.
22 That's the only thing that's going to work on a
23 comment that's on an issue that's this sensitive.

24 So I --

25 MR. McCURDY: I agree. Could I just

1 recommend that Staff ask the commission --

2 HEARING OFFICER FAY: We will be asking
3 that. It's sensitive enough, you can be sure that
4 we're sensitized to it. But let's just be careful
5 on the record here, the "I thinks", or "I
6 believe", at this stage in the game that's not
7 going to work. We're going to have to be very,
8 very clear about what's happening. These are --
9 are records that will be used in -- in the
10 preparation of our decision. It's a very
11 sensitive decision, obviously, so let's -- let's
12 all be very careful to keep opinions to a point
13 where we're commenting on something that's
14 actually in front of us.

15 So you -- Mr. Harris, you had a comment,
16 question?

17 MR. TRUMP: I just had a couple of quick
18 comments on some of the items that -- that Greg --

19 HEARING OFFICER FAY: Are you all done
20 with your comments on behalf of the city?

21 MR. FUZ: Just maybe one concluding
22 thought, that Mr. Trump earlier said that Duke
23 would in fact withdraw their application if the
24 project were required to be redesigned to an air
25 cooled project. And I think on behalf of the

1 city, I would certainly say that -- that we'd be
2 very disappointed if the status quo, which is the
3 existing plant, were to remain on the site. That
4 would mean that over two years of hard work by
5 everybody involved in the community would have
6 gone down the drain. And I think that would be a
7 great disappointment.

8 HEARING OFFICER FAY: Yes.

9 MR. TRUMP: Just a -- just a couple of
10 comments and clarification. We certainly
11 understand the need and importance of working
12 closely with the city on an evaluation of the
13 filter barrier.

14 Just a quick update. I did meet with
15 the harbor director yesterday. I described the
16 activities. I met with the mayor. Mayor Anderson
17 encouraged me to offer up the following statement
18 of -- that we should not foreclose the fact that
19 the structure out in front of the intake would be
20 a significant benefit to the commercial fishermen,
21 because of increased slips. So I think his
22 request was just to make sure we're open minded,
23 and don't view it as a -- as a necessary
24 detriment.

25 Secondly, he also instructed me to work

1 directly -- principally directly with -- with Mr.
2 Algert on the evaluation of the various issues on
3 the filter. So we -- we respect the needs of
4 working with the city very much so.

5 On the visual issues, just one
6 clarification. We do not see the visual workshop
7 that the city staff is -- is envisioning as being
8 outside of the permit envelope, if you would, of
9 the visual issues. We see that as consistent with
10 the -- fulfilling the permit conditions, the
11 visual, that -- the Condition of Certification,
12 where we're getting input from the community about
13 certain features of the facility. Color,
14 landscaping, that sort of thing. Sound wall,
15 architectural treatment.

16 And we will be fully prepared to try to
17 get as much input from the community regarding
18 those issues within the envelope of our project
19 description. While we'll certainly listen at that
20 workshop to other issues of interest, we're not
21 going to be taking any of that additional input in
22 terms of changing our project description.

23 And lastly, along those lines, I guess
24 I, with all due respect, I just challenge the
25 sense of timing. We do not see that that workshop

1 has to influence the FSA. It's in line with the
2 draft conditions we saw in the Preliminary Staff
3 Assessment, in terms of getting community input.
4 And we will -- we certainly want to make it a
5 productive workshop. We will strongly, I guess,
6 resist if it goes off into directions on
7 architectural treatments and those sorts of
8 things. We don't see that as the direction that
9 that workshop should take, from our standpoint.

10 PRESIDING MEMBER MOORE: I certainly
11 didn't hear Mr. Fuz saying that, so --

12 MR. TRUMP: That was more directed
13 towards the process and the public, in terms of --

14 PRESIDING MEMBER MOORE: Okay.

15 MR. TRUMP: And lastly, there's just --
16 I think in working with the city, it's been --
17 it's been productive trying to get to the -- to
18 the draft agreement that took place. There was
19 some recent correspondence regarding some
20 confirmation of different issues, and I think
21 there's some -- there'll be a continuing need, I
22 think, for -- for clarity from the Commission
23 regarding how some of those project features are
24 implemented.

25 I saw -- I saw one reference around

1 documentation going to the city ahead of time
2 somehow, and I'm not quite sure how all those
3 things work. So just we encourage -- we ask for
4 just clarification of some of those things,
5 implementing documents and how those processes
6 would work. We would see that as the point of a
7 project description and position, and that the
8 Energy Commission would be enforcing that in their
9 approval role of this.

10 HEARING OFFICER FAY: I'd recommend that
11 you include that in your -- in your position. If
12 you find that the FSA is either unclear or you
13 disagree with it, you know, put it on the record
14 after that time, maybe during the Evidentiary
15 Hearings, so we -- we have that before us, your
16 position.

17 Okay. Any --

18 PRESIDING MEMBER MOORE: Other public
19 agencies.

20 HEARING OFFICER FAY: Other public
21 agencies? Thank you, Mr. Fuz.

22 I see no other -- is the Coastal
23 Commission here? No indication.

24 All right. I see no other indication
25 from another public agency.

1 PRESIDING MEMBER MOORE: You know what
2 we'd like to do is we've gotten a number of blue
3 cards, as the public would like to comment on some
4 of the issues that we're facing today. What we're
5 going to do is take that comment, and then the
6 Committee Members need to caucus and talk over
7 what we're going to do next and what we're going
8 to ask for from each of the parties. And I think
9 what we'll do is take advantage of the luncheon
10 hour and take a luncheon break in order to do
11 that, and then we'll reconvene here.

12 So I've got blue cards from several
13 people who would like to talk. Let me -- let me
14 caution you that this -- this probably is not the
15 right forum to opine about whether or not we ought
16 to have a power plant or not. We're trying to
17 focus on some technical issues here, so the more
18 you can confine your comments to that, the better
19 off we're all going to be, as there will be other
20 forums, plenty of them, for -- for that kind of
21 discussion, and this is probably not that.

22 Patti Dunton. If Patti's here, she has
23 to leave by noon.

24 MS. DUNTON: Good afternoon. Is this
25 on? Okay.

1 Today I'm here as the General Director
2 of the Salinan Heritage Consultants for the
3 Salinan Tribe in this area. And at the last
4 workshops we talked with Duke about entering into
5 a memorandum of agreement with the Salinan People,
6 as they did with the Chumash People. And we still
7 haven't heard from them on that issue.

8 Also, we haven't been contacted by the
9 San Luis Obispo County Chumash Council on that
10 issue, also. They still haven't contacted us.

11 Also, we asked for some information on
12 the archeological testing that has been done so
13 far, if we could get some information on that
14 testing, what the testing indicated. We believe
15 that -- that we should be informed on what's going
16 on, since there is no Salinan representative out
17 there during testing.

18 And also, we requested that Duke only
19 hire individuals that have documented village
20 sites in the area. We think they -- this is such
21 an important issue that they should work with the
22 local documented people.

23 And also, we're concerned if there's
24 testing that's been done on Morro Rock, which is
25 the Salinan Power Place. There's the endangered

1 Peregrine Falcons that nest there, and this year,
2 for some reason, the eggs didn't hatch. So we're
3 real concerned with that issue, if there's any
4 kind of testing done by -- with the plume,
5 especially if the stacks are lowered with the new
6 power plant, the effects the plume might have.
7 Especially during offshore winds, the rock gets a
8 direct impact from those plumes.

9 And that's basically all I have to say
10 today.

11 HEARING OFFICER FAY: Thank you.

12 PRESIDING MEMBER MOORE: Thank you very
13 much.

14 MS. DUNTON: Thank you.

15 PRESIDING MEMBER MOORE: Colby Crotzer,
16 Councilman. Mr. Councilman, welcome.

17 COUNCILMAN CROTZER: Thank you, Mr. Fay,
18 and Mr. Moore, for being here. I know that your
19 time here is voluntary and indicates your
20 diligence and commitment to your job. Thank you.

21 Very brief comments. Simply that first,
22 the council, speaking through staff, speaks with
23 one voice, in that our direction has to come with
24 a majority vote. That does not necessarily mean
25 that we're unanimous in any of those statements,

1 simply that that's the process we have to follow.
2 And when I hear the Project Director, Mr. Trump,
3 indicating -- attributing a comment to Mayor
4 Anderson, that he has an opinion that an aquatic
5 filter, or a Gunderboom, or something in the bay
6 would add more commercial slips, you can't hear
7 that that is a unanimous opinion. There are
8 parties that certainly would argue that perhaps
9 more commercial slips would be in some respects a
10 detriment to the bay.

11 So that only points to the -- my general
12 opinion that throughout this whole process, the
13 City of Morro Bay's council, the elected
14 officials, have relied upon agencies, such as the
15 Regional Water Quality Control Board, the APCD,
16 Coastal Commission, and others, to look out for
17 our residents' interests, as well as the region
18 and the state, in terms of air quality impacts and
19 degradation of our local waters.

20 At a late date for us to opine, even if
21 it is by vote, on an issue of such magnitude as
22 cooling alternatives, dry cooling, for instance,
23 you have to understand that an impulsive or a
24 short study may not be a very much true -- doesn't
25 indicate a true level of deliberation as we

1 generally want to commit ourselves to when we're
2 making a public statement like that.

3 So my concern is are we in favor of --
4 of a Gunderboom? Well, we look at a couple inches
5 of documents on what those might look like, and
6 then within a week are supposed to make a
7 decision. Can't be seen as too witty of a
8 deliberation. That's not the level of analysis
9 that I need to be able to have an informed
10 opinion.

11 There was another comment about how -- I
12 think, Mr. Moore, you sounded impressed, that the
13 Coastal Commission's original description of
14 coastal dependent use is dedicated toward power
15 plant generation. I hope that you don't
16 misunderstand that it's in any way specific to
17 this site, because it's much more general than
18 that. In other words, within the City of Morro
19 Bay there are a myriad of -- of acres which are
20 described by the Coastal Commission as appropriate
21 for coastal dependent power plant generation uses,
22 not only this location.

23 So when we talk about alternate sites,
24 those sites certainly would be just as
25 appropriate, by that definition, as the current

1 site, or the projected project site at the tank
2 farm. If that makes sense.

3 Thank you.

4 PRESIDING MEMBER MOORE: Thank you very
5 much, Councilman.

6 Bill Woodson.

7 MR. WOODSON: Mr. Moore, thank you for
8 coming to Morro Bay again, and allowing us to
9 observe and participate in this process. I think
10 it's very valuable, and I appreciate it, and I
11 appreciate you personally coming.

12 I just wanted to state real quickly that
13 I'm very disappointed that the CEC Staff hasn't
14 decided on what biological baseline to use. Here
15 we are, I realize that there's three agencies
16 involved, the CEC, the Coastal Commission, and the
17 Regional Water Quality Board. But these three --
18 these three agencies have been longstanding
19 agencies in this state, and we have, for the last
20 two years, been trying to accelerate these
21 processes for sites and for power plant
22 renovations. And here we are today, still
23 uncertain as to what are the rules. And I agree
24 with you that these are very sensitive issues, and
25 we have to be very careful what we say.

1 But I -- I would also say that I think
2 that these issues need to be resolved into a very
3 clear-cut for project requirements, and we
4 shouldn't be reinventing the wheel every time we
5 go through a project. This should've -- this
6 should've been done long ago, and we shouldn't be
7 discussing this today.

8 PRESIDING MEMBER MOORE: Thank you very
9 much.

10 Thomas Laurie.

11 MR. LAURIE: Good morning, Commissioner.
12 I have a quick comment about the Gunderboom.

13 I hope you're aware that Duke has no
14 intention of abandoning the intake structure, the
15 existing intake structure, which is the reason
16 they are so anxious to try the Gunderboom, and
17 they want to try to build a new plant using the
18 certified mitigation as the Gunderboom, and if the
19 Gunderboom fails, they plan to revert to the
20 existing intake structure. So bear that in mind
21 when you think about approving this new
22 technology.

23 My other comment's about the coastal
24 dependent zoning. The Chevron terminal just to
25 the north of the Morro Bay city limits has been

1 abandoned, and that's a certified coastal
2 dependent use in the county plan. And there are
3 no plans to build a new oil terminal there. So I
4 hope the fact that the -- an area of this agency,
5 like a city or a county, just because it's
6 certified by the Coastal Commission as a coastal
7 dependent use for a specific use, doesn't obscure
8 your -- your interest in analyzing the other
9 impacts, because that shouldn't be the determining
10 factor.

11 Thank you.

12 PRESIDING MEMBER MOORE: Thank you, sir.

13 Nelson Sullivan. Mr. Sullivan.

14 MR. SULLIVAN: I'm Nelson Sullivan,
15 resident of Morro Bay, and appreciative of your
16 continued accommodation for us locals.

17 I'd like to apologize for bringing up
18 this issue of the stacks at this late date, but I
19 failed to do it at the right time. The -- there's
20 been no research as far as I can determine, and
21 I've asked many people, of the old stacks had ever
22 been considered for the new plant. And I think
23 there's a good argument for asking that question.

24 The -- if there's -- if there's a
25 project, thousands of tons of highly toxic

1 pollutants will be scattered over this town for
2 the next -- during the next 50 years. There are
3 houses within a half a mile of the new plant that
4 will look down into the stacks. They're at an
5 elevation where they will look down into the --
6 the stack of this new project. I believe it would
7 be feasible to use the old stacks. I think they
8 could duct the exhaust underground with large --
9 large enough ducts so that backpressure wouldn't
10 be a factor. And the chimney effect of the -- of
11 the existing stacks would probably offset any
12 problem with backpressure. There'd be no visible
13 impact with it being underground.

14 If we don't -- the bottom line is, if
15 this project with the short stacks will harm the
16 residents considerably over the life span of this
17 plant. Thank you.

18 PRESIDING MEMBER MOORE: Thank you, sir.

19 James Pauly. Mr. Pauly.

20 MR. PAULY: Hello. I'm a resident of
21 Morro Bay, North Morro Bay. And the gentleman
22 just before me and I don't know each other, yet we
23 come to address the same subject.

24 That is a couple of weeks ago, I was
25 driving in from San Luis Obispo after an evening

1 show, and had somebody in the car with me, and we
2 smelled this strong odor. And I had my windows
3 rolled up, and so on, and there's kind of a foggy
4 overcast and some mist going through in the air.
5 And rolled down my windows and, is somebody
6 burning around here, you know. What is this. But
7 got this strong odor in my window. And couldn't
8 figure it out, looked around. There was hardly
9 any cars around. I thought maybe I was sucking
10 some diesel exhaust, or an old car in front of me,
11 or something, on the highway. Couldn't find it.

12 So I came in on Highway 1 into Morro
13 Bay, and there was a higher fog with some misting.
14 And I looked up and boy, here's this yellow smoke
15 coming out. And I figured well, that's it,
16 because you could just see it underneath all this
17 low layer of clouds or fog, so on. So all the way
18 up to my house, which is in North Morro Bay, this
19 strong odor. I get out of my car, and the strong
20 odor, and I get in my house, and it's in my house.
21 And I had the windows open because we don't have
22 air conditioning there, most of us, because you
23 don't need it. You have a breeze, and it doesn't
24 get that warm.

25 But certainly, I'm going to have to put

1 in air conditioning now, because you're telling me
2 that they're going to go to lower stacks, and
3 we're going to have more pollution. I'm going to
4 be looking down the throats of those new stacks.
5 And I tell you, over -- I moved up here in
6 December, and I moved from southern California. I
7 lived in all that smog down there for years, up
8 and down, around the Pasadena area and the whole
9 area. And I never smelled anything as strong as I
10 smelled that evening.

11 Now, I had noticed prior to that that
12 this invisible plume is not invisible. And I --
13 during the day, and also in the evening,
14 especially in the evening when they crank it up,
15 it appears, or maybe now that there's no
16 regulation on the amount of pollutions that they
17 can put in the air, something is happening.
18 Because I tell you what, many a time I'll look out
19 and I'll see those invisible clouds going down
20 towards the valley, Los Osos, or down towards San
21 Luis Obispo. Many times, it's coming up and
22 curving around over North Morro Bay, over the
23 mountains there. Sometimes it's blowing the other
24 way. Sometimes it's going out towards the rock.

25 But I tell you what. It's out over the

1 city, and I've seen it over the city, and hanging
2 over the city. It's very dependent on how the
3 winds are. And they're telling me that there's
4 less pollution? Baloney. I'll tell you right
5 now, there's a lot of pollution.

6 And for some reason, you know, Duke
7 doesn't want to admit to these things, and I just
8 talked to the Air Pollution gentleman that was
9 here. I grabbed him as he went out the door. I
10 said, you're telling me there's no pollution here?
11 Come live with me for a while.

12 And so I can just say there's three
13 choices. There's not either purgatory or hell,
14 but there's also heaven. And we don't need
15 purgatory, which we have, and we don't need hell,
16 which you're trying to put in here. Give us
17 nothing. We'll take heaven.

18 Thank you.

19 PRESIDING MEMBER MOORE: Thank you.

20 Pam Soderbeck.

21 MS. SODERBECK: Hi. I'm a resident of
22 Morro Bay. And I had a couple of comments. I did
23 not get a chance to review it in any great detail,
24 but as part of the City Council package, I believe
25 Duke's August 9th -- I don't remember what it's

1 exactly called, but the presentations on the
2 alternatives, the cooling alternatives. I glanced
3 through that at the library here, and I made a
4 copy of at least some of it for myself, and I
5 apologize, I failed to bring that with me today.

6 But one thing that I'm worried about, in
7 terms of the decisions and the level of detail
8 that you were talking about in terms of making the
9 -- the analyses of these alternatives, is that the
10 one I saw in that report, which I think Mr. Trump
11 was saying he thought was sufficient, for example,
12 there was a color picture showing a photo
13 simulation, showing what it would look like with
14 the proposed plant, with the dry cooling on it.
15 And in that particular simulation, the dry cooling
16 was showing bright red, which he indicated was
17 done for the purpose of making clear where --
18 where it was on the picture.

19 I viewed that as totally distorting, and
20 drawing attention to something that when you look
21 at it, when I copied it in black and white, looks
22 like no big deal at all. Clearly, I'm not looking
23 at it from standing right next to it, in that
24 picture. But I worry about the sort of
25 information that's being passed on.

1 The city then made their very
2 preliminary, and I think without adequate
3 analysis, determination that they didn't like
4 this, and you know, I -- I wouldn't either, if I
5 thought there was going to be a big red barn
6 somewhere. But I just don't think there's been
7 enough detailed analysis in order to accept
8 whether, in fact, that's what it'll really look
9 like, or not, from the visual standpoint.

10 And from the noise, my recollection was
11 there was a statement in there that would -- a
12 simple one line sentence, I think it was, to the
13 effect that it would exceed the current city noise
14 standards, with no discussion of whether there was
15 anything that could be done in terms of mitigation
16 or anything else with respect to noise, or any
17 mitigation with respect to the visual.

18 So those are the areas that I'm
19 concerned about that -- that there have been some
20 quick analyses done by people because of this
21 schedule that we're on with the Commission, that I
22 think are, you know, really do need to have a
23 little more time and consideration given to them
24 by Staff and by all of the various agencies that
25 are involved.

1 So I urge you not to -- to push the
2 schedule so far that -- that the detailed level of
3 analysis that really needs to be there is -- is
4 bypassed.

5 Thanks.

6 PRESIDING MEMBER MOORE: Thank you.

7 HEARING OFFICER FAY: I'll just mention
8 that that's one of the reasons why Staff will do
9 an independent analysis of these alternatives.

10 PRESIDING MEMBER MOORE: Bonita Churney.

11 MS. CHURNEY: Good afternoon. I am also
12 a resident of Morro Bay. And I have some
13 questions which I think will possibly impact
14 scheduling, and that could be resolved, dealing
15 with information requested on air quality issues.

16 The public has requested information
17 from Duke on predicted increases or reductions in
18 ground level concentrations of all criteria and
19 non-criteria pollutants from the proposed project.
20 The information has been requested for various
21 neighborhoods in both North and South Morro Bay,
22 and also at -- specifically at the schools, the
23 two elementary schools and the high school.

24 This information has been requested
25 informally by the general public, myself included,

1 and also by the Intervenor, specifically through
2 data requests. And reference was made generally
3 to requests earlier, and I'd just like for the
4 record to specify what those requests are. They
5 were requests 299 and 300, directed to Duke, from
6 the Intervenor.

7 Duke objected to those requests, saying
8 that it was irrelevant. But surprisingly, Duke
9 indicated in its response that the information
10 necessary to respond to the request was available;
11 that they, in fact, had already provided it to the
12 CEC through dispersion modeling output files.

13 So I guess my question is, if the data
14 is available, then I believe it should be placed
15 -- made understandable to the general public, and
16 made available to the general public, because we
17 want to know. The residents of Morro Bay want to
18 know what the impact is going to be in their
19 neighborhood, whether there will be increased
20 concentrations of both criteria and non-criteria
21 pollutants. And I think we have a right to know
22 that.

23 And I think a CEQA analysis requires it,
24 as well, because you are looking at whether the
25 increases, if there are increases, and based on

1 information we have it will be -- there will be
2 increases in all -- in concentrations of all
3 pollutants because of the lower stacks, and then
4 the question is whether it will be significant,
5 under a CEQA analysis.

6 And just, Duke has argued that none of
7 them will be significant, because they're all
8 within standards, and they're all below standards,
9 and therefore they don't need to provide any
10 further information. But those standards, and --
11 and what they are stating are within the
12 standards, take into account emission reduction
13 credits. And they're saying because we've fully
14 mitigated, so-called fully mitigated through
15 reduction credits, we don't have to go any
16 further.

17 But I would suggest that under a CEQA
18 analysis, that's not sufficient for local
19 neighborhoods. And for an analysis of what's
20 occurring in the local neighborhoods, that you
21 must provide the data and then determine whether
22 threefold, fourfold, fifteenfold increases of
23 these concentrations are significant. And I would
24 suggest that I think a fifteenfold increase is
25 significant. And we do have information

1 suggesting for PM10 -- and this information didn't
2 come from Duke, unfortunately, it came from the
3 city's air quality expert and the APCD's air
4 quality expert, hired specifically to look at PM10
5 issues, because those issues are raised. And in
6 fact, in certain locations in the city, there will
7 be a fifteenfold increase in PM10 concentrations.

8 Now, under CEQA, I think -- I think it's
9 certainly arguable that that is a significant
10 impact that needs further consideration. So I
11 would just request that in considering what
12 further information the Commission will be looking
13 for, that Staff will be looking for, that you
14 follow up on these data requests and get that
15 information so that we can see, and make -- and
16 then make the proper CEQA analysis.

17 And I would just like to thank the CEC
18 Staff. I know they're -- they're doing a
19 tremendous job. There's a lot of work and I do
20 commend them, but I think this is something that
21 needs to be looked at.

22 Thank you.

23 PRESIDING MEMBER MOORE: Thank you very
24 much.

25 Mandy Davis.

1 MS. DAVIS: Hi. Thanks a lot for
2 allowing me to be here.

3 I am speaking as a resident of Morro
4 Bay, and I'm also speaking as a very concerned
5 citizen for the biological community, the estuary
6 here in Morro Bay.

7 And I would like to make it perfectly
8 clear that there was a representative from the
9 city that spoke earlier, and that indicated to
10 Duke that if they withdrew their -- their
11 application that Morro Bay would be concerned, and
12 that it's not something that they want. I would
13 like to let you know that I do not believe the
14 City of Morro Bay is speaking for the citizenry of
15 Morro Bay.

16 I personally think that they are in
17 violation of their agreement with the citizens as
18 elected officials, because of the initiatives that
19 we have voted on, and that it was indicated that
20 we only supported this if there were no
21 environmental impacts. And I think that the fact
22 that there are environmental impacts has been
23 clearly demonstrated here. I think at this point
24 in time it's -- we're quibbling over the amount
25 and the extent of, and the mitigation of, but

1 there is clearly environmental impact. There is
2 absolutely not a doubt in my mind.

3 If you were to take -- let me tell you
4 what my interest in this is. I am a wildlife
5 rehabber. I live on my boat, on the bay. I spend
6 a lot of time on it, and I am truly concerned
7 about the welfare and health of the estuary. And
8 estuarian systems are extremely important to the
9 fisheries. They're important in a variety of
10 different ways to all the citizens of the State of
11 California and this area.

12 So, but as a wildlife rehabber, I'm
13 really -- really, really concerned. So I don't
14 believe the City of Morro Bay is speaking in our
15 best interest. It's very obvious to me that their
16 primary concern is socioeconomic. And I won't go
17 into that in any more detail.

18 But my primary concern is the health of
19 the bay. And with nine to ten percent of the
20 water of the estuary going into that cooling
21 system as it currently works, I mean, there's
22 absolutely not a doubt in my mind that the
23 majority of the larval forms of a good portion of
24 the wildlife are being destroyed, along with
25 jellyfish and a variety of other things just can't

1 escape that system.

2 So I would like you to know that they
3 are not speaking for us, and I think they are in
4 violation of that. I think that should be
5 considered. And I find it kind of incredible that
6 we're quibbling over whether or not there's
7 environmental impact when these guys even admit
8 there's environmental impact. They would not be
9 discussing Gunderbooms and the filtration systems
10 if they did not at least in some way, shape, or
11 form agree that there is some sort of impact.

12 They're in business. They're not going
13 to do that, not unless, you know, something that's
14 going to cost money, not unless it's really
15 obvious.

16 So I would just -- I wanted to speak up
17 as -- as a citizen, and as a wildlife rehabber,
18 somebody that recognizes what's happening to the
19 estuary. And understand that the City of Morro
20 Bay is not speaking for the majority of us.

21 Thank you.

22 PRESIDING MEMBER MOORE: Thank you.

23 Kim Kimball.

24 MS. KIMBALL: My name is Kim Kimball,
25 and I'm here in my professional capacity as the

1 Executive Director of the Morro Bay Chamber of
2 Commerce.

3 There will be a letter forthcoming from
4 the Chamber of Commerce, signed by the board
5 president, John Zaver, reflecting the board's
6 position regarding dry air cooling.

7 The position of that board of directors
8 is strongly against this option, and in addition,
9 their support of the modernization project
10 presented in the MOU, and validated as the
11 community's option, through the overwhelming
12 support at the November election. It is true that
13 the City Council had a four-one vote, not a five-0
14 vote, to come forward and send you information.
15 The Chamber of Commerce board was unanimous, with
16 the exception of one member who abstained from
17 voting, and that was for business purposes.

18 So you will be receiving this letter
19 forthwith, and thank you very much for being here.

20 PRESIDING MEMBER MOORE: Thank you,
21 ma'am.

22 John Barta.

23 MR. BARTA: Good afternoon, Commissioner
24 Moore, Hearing Officer Fay, representative
25 O'Brien. My name is John Barta, and while I do

1 sit on the Morro Bay Planning Commission, I'm
2 speaking to you as a private citizen.

3 I'd like to step back a little bit from
4 the picture and say that what I'm seeing clearly
5 in the last few months is that we have all these
6 areas of expertise that are examining this project
7 in minute detail, and what we have happening is
8 one person looks in one area, and they -- they see
9 a problem, and then they -- they identify a silver
10 bullet solution in another area. In the case of
11 biology, we look at the critters in the bay, and
12 we -- we say gee, is there a magic way we can stop
13 all that. And so dry air cooling must be the
14 answer.

15 But there's other -- all these other
16 areas of analysis. We're looking to the
17 Commission to sort of put perspective on where we
18 do this balancing act. And so the Morro Bay
19 Planning Commission passed a resolution to the
20 City Council to make it clear that we really don't
21 think some of these things pass what we would call
22 threshold analysis, or what you might call
23 threshold analysis, and that we see that these are
24 big issues when we get into dry air cooling. So
25 I'd like to read to you a resolution from the

1 Planning Commission.

2 This resolution was passed last week,
3 and you'll be receiving a conformed copy of it in
4 due course. But this went to the City Council and
5 they will be taking -- they did take action, you
6 will be seeing that, as was mentioned earlier.

7 I'll just read the resolution part.

8 "Now Therefore, Be It Resolved,
9 the Planning Commission recommends
10 that the City oppose the use of dry
11 air cooling for the Morro Bay Power
12 Plant for the following reasons:

13 "A. The various methods of
14 dry cooling that require cooling
15 towers or structures that were
16 reviewed would cause unsightly
17 and unnecessary blight upon the
18 community.

19 "B. The various methods of
20 dry cooling that require use of
21 fresh water that were reviewed,
22 could cause potential hardship
23 to the city water supply." We refer to
24 the million gallons a day that the Regional Water
25 Quality Board found in the -- in the smallest use

1 case of dry air cooling.

2 "The various methods of dry
3 air cooling that use mechanical
4 pumps and fans that were reviewed
5 may cause unnecessary noise levels
6 upon the community." It is our
7 information that that would be about ten dB
8 increase, which is a huge increase in the noise
9 level.

10 "The various methods of dry
11 cooling that use saltwater for
12 cooling that were reviewed may cause
13 unnecessary salt drift in the air
14 and pollute the surrounding lands.
15 The various methods of dry air
16 cooling that were reviewed use
17 excessive amounts of land that is
18 prime along the Embarcadero Road,
19 that could otherwise be used for
20 community benefit.

21 "The various methods of dry
22 cooling that were reviewed could
23 cause unsightly steam plume that
24 may pollute the environment and
25 cause an unsightly blight upon

1 the community;

2 "Now Therefore, Be It
3 Resolved, the Planning Commission
4 recommends the City reaffirm its
5 support for the Duke proposed
6 upgrade to construct a new efficient
7 state of the art generation facility
8 as stipulated in the City and Duke
9 MOU adopted by resolution on
10 February 28th, 2000, and reaffirm
11 its support of demolition of the
12 existing plant."

13 Thank you.

14 PRESIDING MEMBER MOORE: Thank you, Mr.
15 Commissioner.

16 Garry Johnson. Good afternoon.

17 MR. JOHNSON: Commissioner Moore, Staff.
18 I'm Garry Johnson. I'm a retired engineer from
19 the Bay Area. I've been involved in a number of
20 building semi-conductor facilities and so forth,
21 so I'm very, very familiar with PM10, who I've
22 studied for 40 years and spent millions of dollars
23 using scanning long-term analysis identifying
24 PM10, where is it coming from, and so forth. So I
25 have a pretty good background in the technical

1 aspect of this whole process.

2 I've spent a lot of time looking at Duke
3 Energy plant from one end to the other. They've
4 been very cooperative, and I really analyzed their
5 -- the complete data system, looking at all of
6 their contaminants that may be in the plant, and
7 so forth.

8 I feel like the election of Florida is
9 what numbers are we going to use? I mean, there's
10 -- everybody's throwing these numbers out, and I
11 hope the Commissioner and the Commission and the
12 Staff look at these numbers very closely, because
13 one group is saying that the outflow is wrong, and
14 another group says this is wrong and that's wrong.
15 And it's -- it can be very confusing to the
16 community when they read these allegations in the
17 newspaper, and so forth. So a neophyte, they
18 think that Duke Energy's polluting this, and et
19 cetera and et cetera.

20 And I wish Gary Willey was still here,
21 because I've talked to him at great lengths about
22 this PM10 and so forth, and it's not a problem.
23 And it's not highly toxic. The City of Berkeley
24 is -- is taking their whole fleet of vehicles and
25 using natural gas. The City of San Luis Obispo is

1 converting all their buses to high compression
2 natural gas. So if it was a very highly toxic
3 material, the communities wouldn't be doing this.

4 I highly agree with what Bill Wilson
5 said -- I mean, Woodson, said. Also, I only live
6 two blocks from this plant, and if I thought that
7 this facility was polluting me, I wouldn't have
8 moved here. And this facility several years ago,
9 I wouldn't have moved so close to the plant.

10 As far as the city goes -- excuse me --
11 the city is speaking for the community, 82 percent
12 of these people in this community voted to
13 continue on with the new plant. That's not right?
14 What is right, 72 percent? I know -- for the MOU.

15 Also, when we had our meetings here with
16 the CEC, the scientist, I asked a question to him,
17 is how many pounds of meat does the sea otters
18 consume a day. And he said that they consume 20
19 pounds. It's like the canary in the cave. The
20 canary dies, you know that we have problems in the
21 cave. So if they eat 20 pounds a day, there's
22 five or six sea otters living in the bay, some are
23 living near the facility. That comes to 700
24 pounds of meat per week.

25 Now, if this facility, as people are

1 indicating, is dead on arrival, then the sea
2 otters couldn't survive here. We've also had a
3 whale here, living here last year, for over two
4 months, right near Duke Energy. So I think we
5 just have to watch these numbers very carefully,
6 look at it in a logical way, and not to get so
7 irrational that we throw out numbers that are --
8 that are not true.

9 As far as alternatives go, we're going
10 to have to find alternatives in our energy
11 sources. The last President of the United States
12 that did anything about this was President Carter.
13 But since then, on both political parties, they
14 have eliminated any significant research in
15 alternative energies. Alternative energies, to
16 me, is not using fossil fuels.

17 So I think that we need to put more
18 pressure on the federal government, also the state
19 of California, to go to alternative energies, but
20 to get away from fossil fuels. This state, what
21 they say, in the next year, 2050, we're going to
22 have 50 million living in this state. So if we
23 built 140,000 homes last year and they said
24 they're 80,000 homes short, what's it going to be
25 next year, and next year after that? The more

1 houses we build, the more energy we're going to
2 need.

3 And to finalize this thing about
4 producing power, the cheapest way to produce power
5 is hydroelectric plants. The next source is the
6 ocean, because of the cooling process and it costs
7 less money. If you go to the inland and start
8 producing power that way, 50 percent of the power
9 that's being used has to be used to cool the
10 plants.

11 So thank you for hearing me.

12 PRESIDING MEMBER MOORE: Thank you, sir.

13 Mr. Boatman.

14 MR. WATERS: Thank you. I wasn't going
15 to speak, but a couple things came up I'd like to
16 speak on.

17 The first -- the first thing I'd like to
18 question is the City Planning Commission, and
19 where did their data come from on -- in terms of
20 noise and in terms of size, and other terms of
21 their opinions of dry cooling. They take quite a
22 long time to review house plans, and yet they came
23 out with this study within one or two days, so I
24 would -- I would question that data.

25 And the next thing, speaking as a

1 concerned Morro Bay citizen, the MOU is sold to me
2 with an absolute deadline of when the new plant
3 would be torn down. And that was put in there,
4 I'm sure, as a sweetener to offer the citizens
5 something the City Council knew they wanted, to
6 tear the power plant down. I'm not aware of when
7 it was changed, and I've been out of town a few
8 months. But so the citizens were sold that, on
9 the basis of eventually the site will be as it was
10 before any power plant.

11 And I think that's what most citizens
12 here want. Thank you.

13 PRESIDING MEMBER MOORE: Thank you, sir.

14 Anyone else that would like to come in
15 on our procedures today? Because we're going to
16 take a luncheon break here.

17 The Public Adviser would like to --

18 PUBLIC ADVISER MENDONCA: Commissioner
19 Moore and the audience, my office received a phone
20 call yesterday from Mr. Thad Fendon, F-e-n-d-o-n,
21 and he's from Arroyo Grande. He apparently read
22 an article in the Tribune about ten percent of the
23 power plant energy would be utilized or lost if
24 dry cooling were implemented. And he says this is
25 wasteful when the ocean is next door, when you can

1 install other devices that keep sea life out.

2 It's the tail wagging the dog.

3 It's well known that this plant will
4 reduce environmental impacts. I want the Energy
5 Commission to give the plant a favorable position.

6 PRESIDING MEMBER MOORE: Thank you.

7 All right. With that, we're going to
8 take a break until 1:30, and come back. The
9 Committee's going to caucus, and we'll have some
10 discussion about upcoming orders and instructions
11 for the parties. So with that, we are in
12 adjournment for an hour and five minutes. Thanks.

13 (Thereupon, the luncheon
14 recess was taken.)

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1 AFTERNOON SESSION

2 PRESIDING MEMBER MOORE: And I will say
3 that we've been debating the issues that we've
4 heard today, and I will just say to lead this off,
5 in terms of scheduling, because that's one of our
6 -- our principal concerns, is the schedule.

7 I have to say that I am a little worried
8 that we're falling farther behind than I would
9 have hoped at this point. I don't lay the blame
10 for that on anyone, so that comment should not be
11 taken to be a sign of blame. But it's
12 discomfiting to see that we might have these kinds
13 of delays. And so I want to encourage the parties
14 to get together and work together, perhaps a
15 little more closely than has happened in the past.
16 I think there's ample incentive to be able to do
17 that.

18 And in a moment, Mr. Fay is going to
19 talk about a recommendation that we have -- a
20 requirement that we have, sorry, that the parties
21 file their own expectations or their own best
22 estimate of what they can do in terms of time,
23 with us.

24 But let me just say that time is a
25 critical concern to me. I would like to be able

1 to act expeditiously on the evidence before us and
2 issue a decision in a timely manner. And to the
3 extent that I am able to, I will do that. But it
4 requires a lot of cooperation on the part of all
5 the parties.

6 With that, let me turn to Mr. Fay, who
7 will outline what we're directing as of today's
8 hearing.

9 HEARING OFFICER FAY: Okay. First of
10 all, I'd like to ask Ms. Holmes what the Water
11 Board estimated it would take them from the time
12 they got the FSA until they issued their NPDES
13 permit. Did they tell you what that would be?

14 MS. HOLMES: We talked about it. We
15 talked about -- we didn't talk about number of
16 days. We talked about it in terms of meeting
17 various scheduled board meetings. So, for
18 example, we talked about what would be required to
19 make a December meeting, and we talked about what
20 would be required to meet a February board
21 meeting.

22 HEARING OFFICER FAY: What would be
23 required to meet a December meeting?

24 MS. HOLMES: We'd have to have an FSA by
25 the middle of September, which Staff doesn't think

1 is possible.

2 HEARING OFFICER FAY: Do they have
3 provision for any special board meetings?

4 MS. HOLMES: I believe they do, but my
5 knowledge goes no further than that.

6 PRESIDING MEMBER MOORE: So it's not
7 unprecedented that they have special board
8 meetings at certain times.

9 Oh, I'm sorry. That was --

10 MR. HUBNER: We certainly have scheduled
11 special workshops and special board meetings when
12 the need arises.

13 PRESIDING MEMBER MOORE: So for
14 something that's of this magnitude, it wouldn't be
15 unusual for the board to consider a special board
16 meeting.

17 MR. HUBNER: That's correct.

18 PRESIDING MEMBER MOORE: And -- okay.

19 So --

20 MR. HUBNER: We will, just with one
21 caveat, we will be running into a quorum issue
22 come the end of November. One of our board
23 members hopefully will be reappointed and it won't
24 be an issue. However, if that -- if that happens,
25 we'll have a quorum issue even with our December

1 meeting.

2 PRESIDING MEMBER MOORE: Well, I'm
3 intimately familiar with that one. Very
4 personally familiar with that impending issue.

5 So I appreciate that.

6 MR. HUBNER: Okay. Thank you.

7 MR. HARRIS: Can I ask for clarification
8 on what the steps would be between the FSA and the
9 meeting in December. Would the December meeting
10 be a final permit approval, or one of the interim
11 steps?

12 PRESIDING MEMBER MOORE: Probably the
13 board representative is the one to answer that.

14 MR. HUBNER: Certainly. Well, we're
15 looking at the FSA, the information there, the
16 CEQA analysis that we can obtain, and then we
17 would issue our draft permit. We have at least a
18 30-day comment period. We would need time after
19 that to -- to respond to comments, and revise the
20 permit as appropriate. And then send it -- we
21 would want at least two weeks to send it out to
22 our board members for consideration at the
23 hearing.

24 We would also need, of course, the --
25 the CEC to do their certification prior to the

1 hearing for us, for the board to actually adopt
2 the permit.

3 PRESIDING MEMBER MOORE: Now, that --
4 that was not called for in the Moss Landing case.
5 Why -- why are you calling for it in this case?

6 MR. HUBNER: Actually, I believe it was
7 the same process that we did at Moss Landing.

8 PRESIDING MEMBER MOORE: No. The only
9 reason that the Water Board acted after the
10 Commission was because they -- they wanted to put
11 the matter over and have extra consideration. But
12 I don't think they were asking to -- to make their
13 decision after the CEC's decision.

14 MR. HUBNER: Well, that's how -- that's
15 the legal advice that I received as of yesterday
16 from our attorney. That's the process that she
17 saw, that those things would need to be in place
18 in terms of the proposed member's decision and the
19 certification, we would need those to happen. And
20 they could happen a day or two before our -- our
21 hearing, but they would need to occur for the
22 board to act. Not necessarily hear it, but for
23 the board to act.

24 MR. GRIMM: Mr. Fay, I think -- I think
25 the regional board legal counsel has determined

1 that this project is slightly different under the
2 federal regulations than the Moss Landing process.
3 Therefore, they have to await the lead agency's
4 determination before they take action in this
5 case. Different from Moss Landing.

6 PRESIDING MEMBER MOORE: New source
7 versus old source? Is that the --

8 MR. GRIMM: Yes.

9 PRESIDING MEMBER MOORE: Okay. All
10 right.

11 MR. HARRIS: Let me -- I want to go by
12 the word certification, because I think that's an
13 important issue, because the Energy Commission's
14 certified regulatory program does not include a
15 certification of an environmental document, like
16 you'd typically see under CEQA. That -- that
17 basically goes back to the series of questions I
18 posed about what's the environmental document.
19 And if you're talking about a certification of the
20 document before the final permit, I guess we need
21 some clarity on -- I thought I heard you say you
22 needed the Presiding Member's Proposed Decision
23 before you could issue a final permit. Is that --

24 MR. HUBNER: Well, those are the two
25 terms that I heard of, or received input from our

1 attorney. If those are incorrect, then I stand
2 corrected.

3 HEARING OFFICER FAY: I think actually
4 they're saying they -- they need a Commission
5 decision, not -- not the Proposed Decision.

6 PRESIDING MEMBER MOORE: That is what
7 you just said. Correct?

8 MR. HUBNER: I believe so.

9 PRESIDING MEMBER MOORE: Okay. Anything
10 further, Mr. Harris?

11 MR. HARRIS: I guess I'll just state for
12 the record that I'm confused, and I'm all --

13 PRESIDING MEMBER MOORE: Okay. How can
14 we get -- how can we get a more refined version of
15 that from your attorney?

16 MR. HUBNER: In terms of scheduling and
17 who needs to act first?

18 PRESIDING MEMBER MOORE: And what -- and
19 the definition of what each step in the process of
20 acting really means.

21 MR. HUBNER: I can certainly go back and
22 request that from her.

23 PRESIDING MEMBER MOORE: Would you ask
24 her to send us -- actually, send Mr. Fay a letter
25 outlining that? Of course, we'll docket it and

1 make it available to all the parties. And
2 indicate to us exactly what -- how she perceives
3 the -- the process to go. And to define the terms
4 of each one of the products at each step.

5 MR. HUBNER: I will.

6 PRESIDING MEMBER MOORE: Thank you.

7 MR. HUBNER: Thank you.

8 HEARING OFFICER FAY: Is that Jennifer
9 Suleway?

10 MR. HUBNER: Yes.

11 HEARING OFFICER FAY: Okay.

12 All right. The -- during lunch, we
13 discussed the Committee's response, and we had
14 actually contemplated asking for briefs on this --
15 on this baseline question. But I think we can
16 save the parties some time on this.

17 In the interest of respecting Staff's
18 independence, you know, rather than either
19 contemplate -- contemplating some requirement that
20 would follow briefs, we would like to give --
21 leave Staff with the flexibility to do the
22 analysis they want, so long as they perform an
23 analysis, at least one analysis, using a baseline
24 of historical -- the historical existing
25 environment that's within a five-year history.

1 So that would, I believe, address the
2 concern of the CEQA guidelines that call for
3 impacts measured against the existing environment.
4 And then if Staff feels the need to -- to look at
5 something else, they may do so, so long as they do
6 address that.

7 And we also direct the Applicant to
8 cooperate as fully as possible with Staff on -- on
9 the analysis of the -- the alternatives called for
10 by the -- or, the -- the mitigation measures
11 called for by the Water Board to be analyzed. And
12 I -- we won't anticipate what Staff will need, but
13 directing the Applicant to -- to cooperate in
14 providing information on that. Staff has not yet
15 had a chance to evaluate what the Applicant has
16 already done, so, obviously, we'd expect them to
17 do that before they ask for additional help.

18 And Applicant's incentive there is that
19 if they can help the Staff move this along will
20 speed up the process of getting this analysis
21 done.

22 We also direct Staff and the Applicant
23 to work together on a schedule proposal that will
24 take into account this cooperation that we just
25 ordered, and come up with a proposed schedule for

1 the rest of the case.

2 Now, I -- I understand that the parties
3 may not reach agreement on what that schedule
4 should be, but they are directed to work together
5 to -- to try to make it as rapid as possible. And
6 that they will file -- in fact, all parties would
7 file their proposed schedule changes seven days
8 from today.

9 PRESIDING MEMBER MOORE: Let me -- let
10 me just emphasize what Mr. Fay is saying. Given
11 the kinds of scheduling delays that we're seeing,
12 it is possible that some of the Evidentiary
13 Hearings may slip out into the holiday periods,
14 around Thanksgiving or Christmas. And just for
15 the record, so everyone's clear, I'll be very
16 chagrined if that happened, and I'll be sorry to
17 do what I'm just about to say I'm going to do.
18 But if it means cancelling holidays, that's what
19 will happen, because those hearings will go off as
20 rapidly as they can.

21 So I'll be looking for the earliest
22 possible time that -- that we can, but if they
23 happen to fall during the holiday periods, you
24 should be advised that it will be my intention to
25 conduct the Evidentiary Hearings for as long and

1 as thoroughly as -- as necessary, even up to and
2 including the holiday periods.

3 That should provide some incentive to
4 get the -- the best agreement that's possible, as
5 far as the proposed schedules. But, of course,
6 we're leaving that to your -- your good offices,
7 and to your own negotiating skills in those -- in
8 those agreements.

9 Any questions for us on those?

10 MR. HARRIS: I guess a comment. Could
11 we have that order reduced to writing, just so
12 we're -- we're sure that we'll be hitting all your
13 marks?

14 PRESIDING MEMBER MOORE: Yes.

15 MR. HARRIS: That would be very helpful
16 for us. It doesn't have to be particularly long.

17 PRESIDING MEMBER MOORE: It won't be for
18 -- won't be particularly long. That's easy.

19 Anyone else? Yes.

20 MS. GROOT: I have a question. What
21 happens to the outstanding data requests that --
22 that still haven't been answered?

23 PRESIDING MEMBER MOORE: The Committee
24 will issue a response on that very, very shortly,
25 indicating what we feel is the appropriate

1 response on all of the requests that have been
2 made to date.

3 You did hear, on a couple of those
4 requests, that they are, for instance, Ms. Lewis
5 was saying today that there is a response that's
6 forthcoming, and it's in process. So clearly,
7 we've taken that into account in -- in what we're
8 going to issue. So some things are ongoing, they
9 simply haven't been delivered yet. For those that
10 are not, we'll opine in writing very, very
11 shortly.

12 MR. HARRIS: If I may, I hate to open
13 this can of worms, but if there's going to be
14 significant delay associated with just the water
15 issue, I think it's worth putting back on the
16 table the possibility of issuing a PSA Part 1 and
17 Part 2 -- that should be FSA. I don't want to go
18 back to the PSA, thank you. A two-part Final
19 Staff Assessment. If there's pretty clear
20 agreement that we're down to just basically to the
21 marine biology issues, the rest of them can move
22 forward. I think that might help us with schedule.

23 I also want to take advantage of the new
24 provisions in -- I think it was 28x, related to
25 abbreviated or no hearings on -- issues, and that

1 may help us with schedule.

2 HEARING OFFICER FAY: Okay.

3 PRESIDING MEMBER MOORE: Ms. Holmes, can
4 I ask you to comment on that? I know you've
5 thought about this, you and Ms. Lewis, about the
6 idea of bifurcating the schedule. So while the --
7 the issue is on the table, could I ask for your
8 reactions to that?

9 MS. HOLMES: Yeah. I -- we've used it
10 before with great effectiveness on other cases. I
11 think we may run up against a practical problem in
12 trying to do it in this case this fall, just
13 because we've got so many cases and policies and
14 we've got so many PSAs, FSAs, and SAs going out.
15 And I think we may run into real practical
16 problems trying to produce two documents instead
17 of one.

18 But that's something we can perhaps
19 respond to when we -- when we provide our comments
20 and our draft schedule. But from where I sit
21 right now, I -- I think it's likely to be a
22 practical problem.

23 PRESIDING MEMBER MOORE: As opposed to a
24 philosophical problem, or -- or something that
25 simply wouldn't -- wouldn't work, in terms of

1 sequencing the rest of the document.

2 MS. HOLMES: Yeah. I mean, I think that
3 it's certainly easy to -- to conceive of having
4 hearings on various topics that wouldn't be
5 related to the -- the areas that we're still doing
6 further analysis on, earlier than the other
7 hearings. But it'd be pretty limited in scope, I
8 think, number one and number two. We've got, as I
9 said, practical considerations.

10 PRESIDING MEMBER MOORE: As a practical
11 matter, would that be an area where we would be
12 able to bring in private contract assistance that
13 would change that -- that equilibrium, or -- or is
14 it too late for that?

15 MS. HOLMES: Kae might have a better
16 answer to that than I do.

17 MS. LEWIS: Well, we already have -- we
18 already have consultants doing a great deal of
19 this work. And we're going to have to have
20 additional number to deal with the -- the
21 biological mitigation analysis that we're going to
22 have to do. So -- and I don't think that helps,
23 by bringing in additional people. You already
24 have one person managing 40, and I don't think
25 it's practical to add more to that. It's not

1 going to save us time.

2 PRESIDING MEMBER MOORE: I think I was
3 asking a slightly different question than that.
4 If, in response to what Caryn was just saying, you
5 needed additional analytical help, and I'm
6 assuming that that is either identified or
7 available through some of the subcontracts that
8 we've been issuing of late through the Commission,
9 would that in fact take some of the workload
10 burden that Ms. Holmes is suggesting away?

11 MS. LEWIS: No. I was responding to
12 that -- that fact. Is that additional people
13 would not make this an easier task at this point.

14 MS. HOLMES: My point also is that we've
15 gotten so many -- and I don't have the right
16 number here, you may actually have a closer idea
17 than I do -- of how many Staff Assessments, PSAs,
18 FSAs, we've got going out this fall, there's only
19 so many hours in the week that management people
20 can review things. And although you'd think it
21 wouldn't take any longer to review two sections --
22 two sections separately than together, in fact, it
23 does, because other things come up and people set
24 their priorities, and it's just easier for -- for
25 the review process and the publication process to

1 have one document than two documents.

2 PRESIDING MEMBER MOORE: I think that --
3 go ahead, Kae.

4 MS. LEWIS: I was going to mention that
5 our management is strongly discouraging
6 bifurcating the Staff Assessments for this reason.

7 PRESIDING MEMBER MOORE: Yeah, I
8 understand. Well, I --

9 PUBLIC ADVISER MENDONCA: Commissioner
10 Moore --

11 PRESIDING MEMBER MOORE: I'm sorry.

12 PUBLIC ADVISER MENDONCA: -- the Public
13 Adviser would like to weigh in on this topic.

14 I routinely rise to the occasion to say
15 from the public's perspective, it's very, very
16 difficult to deal with an analysis that's split up
17 into parts, unless you've been intimately
18 involved, seated at the table. They rely on a
19 document.

20 Thank you very much.

21 PRESIDING MEMBER MOORE: Thank you.

22 I -- I think I just wanted to make sure
23 we had a bit of an airing of this, and so while I
24 appreciate the comment that Mr. Harris is making,
25 I guess it should be apparent that because of --

1 of the role of each one of the Commissioners
2 sitting on these other cases, we're all very, very
3 much aware of the load that the Staff is carrying
4 in order to try and make these things come out.
5 So that would inevitably be a part of the decision
6 that was made.

7 It wouldn't just be can we cause this
8 analysis to come out in a -- in a bifurcated
9 fashion. We would have to take the -- the Staff
10 resources and the load that they're carrying into
11 account.

12 So let me -- let me commend this to you
13 to -- to talk between Staff and the Applicant
14 about whether this is possible or not.

15 Yes.

16 MR. TRUMP: One -- one additional
17 practical consideration. My understanding is that
18 there's a window for discovery of 180 days, and
19 we've responded to nearly a thousand data
20 requests. I think in many of these areas the
21 record is replete and complete, from our view.
22 And I would suggest that keeping the record open
23 while we're waiting, because of the obvious
24 practical considerations of workload, should not
25 in fact jeopardize the fact that we'll just have

1 mountains of more data requests that are not
2 necessarily relevant, or not relevant, and that'll
3 just tie up in knots. It will be, you know,
4 create a lack of focus about what the real
5 traditional issues are and what-not.

6 So I'm just very concerned that we've
7 already passed 180 days on that, and I request
8 that that at least be considered in terms of some
9 of these areas, whether or not the discovery
10 period is closed and everything is buttoned up, so
11 we don't anticipate hundreds of more data
12 requests.

13 PRESIDING MEMBER MOORE: Okay. That --
14 that's a fair remark. I should say that when the
15 data requests come up, and Mr. Fay reviews them
16 with the Committee, that overlap, duplication,
17 timeliness, relevance, are all a part of the
18 discussion that we have, as well as we have the
19 very able input of the Staff telling us their
20 reaction to -- from the -- from the experts. So
21 we have a good deal of information on, I think,
22 both sides of each one of those data requests as
23 they come up. And I hope that in the end, you
24 find that we've fairly adjudicated them on behalf
25 of all parties, using those parametrics to guide

1 us.

2 HEARING OFFICER FAY: Mr. Trump, were
3 you contemplating that additional discovery that
4 may have to take place regarding these mitigation
5 measures?

6 MR. TRUMP: I'm referring -- I guess I,
7 knowing how hard we've worked to very thoroughly
8 respond to the volume of data requests, I'm just
9 concerned that as a delay tactic the project
10 opponents will create more workload that is
11 related to some of these areas which I think we
12 all -- it sounds like, notwithstanding the
13 workload, they're very close to being at a point
14 where an FSA could, in fact, be issued.

15 So I believe that's an admission by the
16 Staff that there's not a lot of additional
17 discovery needed in those areas to complete the
18 FSA. But it is a scheduling reality about when
19 the Staff can bring this to closure. So that's --
20 that's how I -- how I interpret the information.

21 Now, what we're doing, we're going to
22 delay the FSA across all these areas. I think it
23 invites then more and more data requests, when in
24 fact there's at least an acknowledgment implicitly
25 that the discovery is complete, and there's an FSA

1 that could be issued.

2 HEARING OFFICER FAY: Okay.

3 MR. TRUMP: So I -- I'm just very
4 concerned about that. We -- we're at a point
5 where we just can't continue to expend millions of
6 dollars, literally, on -- on this work product
7 that has no material benefit to the real issues in
8 the case. So I'm just -- I'm very concerned about
9 that.

10 HEARING OFFICER FAY: I -- I think --

11 MS. GROOT: May I say something?

12 HEARING OFFICER FAY: -- a delay in the
13 FSA -- just a moment. A delay in the FSA does not
14 extend the general discovery process. But
15 obviously, we've directed the Applicant to assist
16 Staff in preparing these analyses that have been
17 requested by the Water Board. And I think there's
18 a difference there.

19 MR. TRUMP: No, I'm not speaking of
20 those additional areas. We totally understand the
21 importance and relevance of them, and we will
22 fully support those -- those issues.

23 I'm speaking more of, I guess, Geology,
24 or Archeology, or, you know, some of the other
25 areas where I think we've got a pretty good

1 record. A lot of good questions have been asked,
2 and I'm -- I'm just concerned that there'll be a
3 need to just throw in more questions into the
4 hopper, when they don't really add much. So --

5 HEARING OFFICER FAY: Sure. And --

6 MR. TRUMP: -- that's just -- but I
7 fully understand the need for additional
8 information we discussed in some of these other
9 areas.

10 HEARING OFFICER FAY: Okay. And I don't
11 know if I'm anticipating Ms. Groot's concern, but
12 she does have a petition pending that addresses
13 timely data requests. And so I don't include
14 those in understanding your comment.

15 Was that basically what you were
16 concerned about?

17 MS. GROOT: Yeah. I was concerned about
18 that, and also -- and I'm not sure whether Andy
19 was talking about us. I -- perhaps I shouldn't
20 have taken that personally.

21 But the -- the question I have is would
22 we be allowed follow-up questions if they seem
23 appropriate? To us, that is.

24 HEARING OFFICER FAY: Not after the
25 discovery period is closed.

1 MS. GROOT: And when will that be?

2 HEARING OFFICER FAY: Well, according to
3 the -- the regs, it was 180 days, which has
4 passed. Which has passed.

5 Okay. Are there any questions about the
6 Committee's order? And -- and we will reduce this
7 to writing, and get it out, post it on the Web,
8 make it available to everybody.

9 Ms. Holmes, any -- okay. Mr. Harris?

10 MR. HARRIS: A quick comment. We were
11 anticipating that we'd be filing a motion, so once
12 we see the written order we may have some comments
13 that we provide on that.

14 I don't know whether we -- going as far
15 as this petition, we thought that maybe one point
16 in the petition, we will have the baseline issue.
17 But I think maybe you've offered a good solution
18 that gets us through that issue, so we'll read the
19 order and we'll talk, and we'll keep in contact
20 with everybody.

21 HEARING OFFICER FAY: Okay.

22 PRESIDING MEMBER MOORE: Is that's it,
23 then I want to thank everyone for coming, and we
24 appreciate the attention everyone's paid to this.
25 And I just want to acknowledge the hard work that

1 the Staff is doing and tell you that I'm very,
2 very appreciative. And I -- I bear that from my
3 colleagues, as well. And the Applicant --

4 MS. GROOT: Commissioner Moore --
5 Commissioner Moore.

6 PRESIDING MEMBER MOORE: Yes.

7 MS. GROOT: I did get confused as to
8 when the evidentiary period happens.

9 HEARING OFFICER FAY: That'll be
10 reflected in the Committee's Scheduling Order,
11 which will come out some time after we hear from
12 the parties. And let me just clarify that a week
13 from tomorrow, that the schedules are due.

14 PRESIDING MEMBER MOORE: Close of
15 business.

16 HEARING OFFICER FAY: August 24th.

17 PRESIDING MEMBER MOORE: Thank you.
18 We're adjourned.

19 (Thereupon, the Committee Status
20 Conference was concluded at
21 2:07 p.m.)
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23
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25

CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Committee Status Conference;
that it was thereafter transcribed into
typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
Conference, nor in any way interested in the
outcome of said Conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 24th day of August, 2001.

JAMES RAMOS

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